

AUG 6 1993

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, and
UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,
v.

JOHN L. BAGWELL: CLINCHFIELD COAL CO.,
and SEA "B" MINING CO.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Virginia

JOINT APPENDIX

ROBERT H. STROPP, JR.
EARL V. BROWN, JR.
900 15th Street, N.W.
Washington, D.C. 20006

JOHN R. MOONEY
1341 G Street, N.W.
Washington, D.C. 20005

WALTER KAMIAT
LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390

Counsel for Petitioners

WILLIAM B. POFF
CLINTON S. MORSE
FRANK K. FRIEDMAN
WOODS, ROGERS & HAZLEGROVE
Dominion Tower, Suite 1400
10 South Jefferson Street
Post Office Box 14125
Roanoke, VA 24038-4125
(703) 983-7600

Counsel for Respondent
John L. Bagwell,
Special Commissioner

PETITION FOR WRIT OF CERTIORARI, FILED APRIL 8, 1993
WRIT OF CERTIORARI GRANTED JUNE 1, 1993

TABLE OF CONTENTS

	Page
Docket Entries	5
20 Va. Cir. 463 (August 22, 1990)	28
Transcript of Oral Argument and Bench Decision, February 12, 1990	38
Transcript Excerpts of Hearing Testimony: (Virginia Supreme Court Record No. 910634)	52
Transcript Excerpts of Hearing Testimony: (Virginia Supreme Court Record No. 920299)	157
Excerpt of Brief for Appellant (Virginia Supreme Court Record No. 920299)	205

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

Record No. 920299

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellant,
against

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

RELEVANT DOCKET ENTRIES

Date	Proceedings
	Order entered on March 6, 1992
March 27, 1992	Trial court record Manuscripts (5 vols.) Transcripts (16 vols.) Exhibits (4 envs. & 3 folders) Picket report (2 folders) Appendix (4 vols.) Appellants' brief (1 vol.) Amicus Curiae (1 vol.) Reply brief (1 vol.) Appendix of cases (1 vol.)
April 15, 1992	Appendix (2 vols.)
	Order entered on May 14, 1992
	Order entered on June 8, 1992
	Letter from Clerk's Office to counsel, dated August 14, 1992
	Letter from Clerk's Office to counsel, dated August 28, 1992

VIRGINIA:

Date	Proceedings
	Opinion rendered on November 6, 1992
	Order entered on November 6, 1992
November 16, 1992	Notice of intention to apply for rehearing
December 7, 1992	Petition for rehearing
	Order entered on January 8, 1993
August 2, 1993	Record from Court of Appeals Manuscript (1 vol.) Appendix (4 vols.) Appellants' brief (1 vol.) Amicus curiae (1 vol.) Reply brief (1 vol.) Appendix of cases (1 vol.)

I, David B. Beach, Clerk of the Supreme Court of Virginia, certify that the papers listed above and filed herein are the original papers and copies of orders entered in the above-styled case.

David B. Beach, Clerk

By:

Chief Deputy Clerk

* * * *

IN THE SUPREME COURT OF VIRGINIA

Record No. 910634

JOHN L. BAGWELL, SPECIAL COMMISSIONER,
Appellant,
against

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA AND INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Appellees.

RELEVANT DOCKET ENTRIES

Date	Proceedings
April 24, 1991	Petition for appeal
	Order entered on May 24, 1991
July 12, 1991	Record from trial court and Court of Appeals Manuscripts (11 vols.) Transcripts (35 vols.) Exhibit (9 envs., 3 vols. and 1 box) Picket reports (1 env. and 1 folder) Misc. evidence (1 group) Appendix (9 vols.) Appellant's brief (1 vol.) Appellee's brief (1 vol.) Reply brief (1 vol.) Amicus curiae (1 vol.) Petition for appeal (2 vols.)
	Order entered on November 7, 1991
	Order entered on November 22, 1991

Date	Proceedings
	Order entered on March 5, 1992
April 14, 1992	Appendix (1 vol)
	Order entered on May 20, 1992
	Opinion rendered on November 6, 1992
	Order entered on November 6, 1992
November 16, 1992	Notice of intention to apply for rehearing
December 7, 1992	Petition for rehearing
	Order entered on January 8, 1993
July 28, 1993	Record from Court of Appeals Manuscript (2 vols.) Joint appendix (9 vols.) Appellants' briefs (3 vols.) Appellees' briefs (1 vol.) Reply brief of appellants (2 vols.) Brief of amicus curiae (1 vol.) Appellants' reply brief (1 vol.) Petition for appeal (2 vols.)

Virginia:

IN THE COURT OF APPEALS OF VIRGINIA

Record No. 1953-89-3 and 1508-90-3
through 1513-90-3

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellants,
against

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

RELEVANT DOCKET ENTRIES

Date	Proceedings
December 18, 1989	Notice of appeal, with attachment (1953-89-3)
December 19, 1989	Notice of appeal, with attachment (1508-90-3)
December 19, 1989	Notice of appeal, with attachment (1509-90-3)
December 19, 1989	Notice of appeal, with attachment (1510-90-3)
December 19, 1989	Notice of appeal, with attachment (1511-90-3)
December 19, 1989	Notice of appeal, with attachment (1512-90-3)
December 19, 1989	Notice of appeal, with attachment (1513-90-3)
September 19, 1990	Appendix of cases (1 vol.)

Date	Proceedings
	Order entered on September 28, 1990 (1953-89-3 and 1508-90-3 through 1513-90-3)
	Order entered on September 28, 1990 (1953-89-3 and 1508-90-3 through 1513-90-3)
December 11, 1990	Record from trial court, 1953-89-3 and 1508-90-3 through 1513-90-3) Manuscripts (2 vols.) Transcripts (16 vols.) Exhibits (1 box) Misc. reports (2 envs.) Addendum (1 vol.)
December 26, 1990	Additional record from trial court (1953- 89-3) Manuscript (1 vol.)
January 30, 1991	Additional record from trial court Exhibits (1 vol.)
February 4, 1991	Appendix (4 vols.) Order entered on March 12, 1991 (1508- 90-3 through 1513-90-3) Order entered on December 2, 1991 (1953-89-3 and 1508-90-3 through 1513-90-3) Order entered on December 18, 1991 (1953-89-3 and 1508-90-3 through 1513-90-3)
January 2, 1992	Notice of filing of transcript, etc. (1953- 89-3 and 1508-90-3 through 1513-90-3)
January 2, 1992	Notice of appeal to Supreme Court (1953-89-3 and 1508-90-3 through 1513-90-3)

Date	Proceedings
	Order entered on January 15, 1992 (1953-89-3 and 1508-90-3 through 1513-90-3)
	Supreme Court order entered on March 6, 1992
May 26, 1989	Notice of appeal, with attachments (0790-89-3)
June 8, 1989	Amended notice of appeal (0790-89-3)
June 15, 1989	Notice of appeal, with attachments (0904-89-3)
August 15, 1989	Notice of appeal, with attachments (1287-89-3)
August 29, 1989	Notice of appeal, with attachments (1333-89-3)
October 19, 1989	Notice of appeal, with attachments (1629-89-3)
October 26, 1989	Record from trial court: (0790-89, 0904- 89, 1287-89, 1333-89) Manuscripts (6 vols.) Transcripts (18 vols.) Exhibits (7 envs.) Misc. evidence (1 group) Pickford reports (1 folder)
October 30, 1989	Record from trial court: Exhibit (1 vol.)
November 9, 1989	Notice of appeal, with attachment (1743-89-3)
	Order entered on November 29, 1989
	Order entered on November 30, 1989
December 5, 1989	Petition for appeal (1 vol.) (0790-89, 0904-89, 1287-89, 1333-89)

Date	Proceedings
	Order entered on December 14, 1989
	Order entered on January 11, 1990
	Order entered on February 7, 1990
February 14, 1990	Record from trial court: (1629-89-3) Manuscript (1 vol.) Transcripts (5 vols.) Exhibits (1 vol.)
	Order entered on March 13, 1990
	Order entered on March 20, 1990
March 26, 1990	Additional record from trial court (1629-89): Transcripts (4 vols.) Exhibits (1 vol.) Reports (1 env.)
March 30, 1990	Record from trial court: (1743-89) Manuscript (1 vol.) Transcripts (7 vols.) Exhibits (1 env.)
April 4, 1990	Petition for appeal, etc. (1629-89-3) (1 vol.)
April 27, 1990	Appellees' statement of position in lieu of brief and motion to withdraw
	Order entered of September 21, 1990
September 26, 1990	Appellees' waiver of oral argument
	Order entered of September 29, 1990
	Order entered on December 6, 1990
	Opinion rendered March 26, 1991
	Order entered on March 26, 1991
April 24, 1991	Notice of appeal to Supreme Court

COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT
OF THE COUNTY OF RUSSELL

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, and
SEA "B" MINING COMPANY

vs.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*

RELEVANT DOCKET ENTRIES

Date	Proceedings
April 13, 1989	—BILL OF COMPLAINT
April 19, 1989	—NOTICE OF HEARING
April 13, 1989	—INJUNCTION—ORDER
April 13, 1989	—INJUNCTION BOND
April 13, 1989	—PROOF OF SERVICE, ON LOCAL
April 13, 1989	—PROOF OF SERVICE, DIST. 28
April 21, 1989	—MOTION TO AMEND INJUNCTION
April 21, 1989	—AMENDED INJUNCTION
April 28, 1989	—PROOF OF SERVICE—INT'L.
April 28, 1989	—PROOF OF SERVICE—DIST. 28
April 25, 1989	—NOTICE OF MOTION FOR RULE
April 25, 1989	—MOTION FOR RULE TO SHOW CAUSE
April 28, 1989	—RULE TO SHOW CAUSE—INT'L.

Date	Proceedings
April 28, 1989	—RULE TO SHOW CAUSE—INT'L.
April 28, 1989	—RULE TO SHOW CAUSE—DIST.
April 28, 1989	—RULE TO SHOW CAUSE—DIST.
May 01, 1989	—PROOFS OF SERVICE
May 09, 1989	—MOTION FOR RULE TO SHOW CAUSE
May 09, 1989	—RULE TO SHOW CAUSE—INT'L.
May 09, 1989	—RULE TO SHOW CAUSE—DIST.
May 12, 1989	—PROOFS OF SERVICE
May 10, 1989	—RESPONSE TO BILL OF COMPLAINT AND MOTION TO AMEND
May 10, 1989	—MOTION TO RECONSIDER
May 11, 1989	—MOTION FOR RULE TO SHOW CAUSE
May 11, 1989	—RULE TO SHOW CAUSE—INT'L.
May 11, 1989	—RULE TO SHOW CAUSE—DIST.
May 11, 1989	—PLAINTIFF'S PRE-HEARING MEMO- RANDUM
May 12, 1989	—PROOFS OF SERVICE
May 17, 1989	—RESPONSE TO BILL OF COMPLAINT AND MOTION TO AMEND
May 18, 1989	—ORDER ADJUDICATING DEFEND- ANTS IN CONTEMPT
May 18, 1989	—DECREE DENYING AMENDMENT OF AMENDED INJUNCTION, GRANT- ING RULE TO SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND DENYING INTERIM CONTEMPT SANCTIONS
May 24, 1989	—RESPONSE TO BILL OF COMPLAINT AND MOTION TO AMEND

Date	Proceedings
May 24, 1989	—NOTICE OF APPEAL
May 25, 1989	—ORDER (EXT. OF TIME TO FILE)
May 26, 1989	—FOURTH MOTION FOR RULE TO SHOW CAUSE
May 26, 1989	—RULE TO SHOW CAUSE—INT'L.
May 26, 1989	—RULE TO SHOW CAUSE—DIST.
May 31, 1989	—PROOFS OF SERVICE
June 02, 1989	—FIFTH MOTION FOR RULE TO SHOW CAUSE
June 05, 1989	—RULE TO SHOW CAUSE—INT'L.
June 05, 1989	—RULE TO SHOW CAUSE—DIST.
June 08, 1989	—PROOFS OF SERVICE
June 02, 1989	—NOTICE OF APPEAL
June 06, 1989	—NOTICE OF HEARING RE: BONDS
June 06, 1989	—MOTION TO DISSOLVE OR DISMISS INJUNCTION
June 07, 1989	—REQUEST FOR PRODUCTION OF DOC- UMENTS
June 07, 1989	—MOTION OF DEFENDANTS FOR EX- PEDITED RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS
June 07, 1989	—BILL OF PARTICULARS
June 07, 1989	—MOTION OF DEFENDANTS FOR EX- PEDITED BILL OF PARTICULARS
June 07, 1989	—SECOND ORDER ADJUDICATING DE- FENDANTS IN CONTEMPT
June 08, 1989	—PLAINTIFF'S REQUESTS FOR PRO- DUCTION OF DOCUMENTS
June 08, 1989	—PLAINTIFFS' MOTION FOR BILL OF PARTICULARS

Date	Proceedings
June 09, 1989	—BRIEF IN SUPPORT OF MOTION TO DISMISS AND DISSOLVE INJUNCTION
June 09, 1989	—RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND DISSOLVE INJUNCTION AND BRIEF IN SUPPORT THEREOF
June 12, 1989	—BOND ON APPEAL OF JUDGMENT
June 12, 1989	—MOTION TO CONTINUE PORTIONS OF FIFTH RULES TO SHOW CAUSE AND TO APPOINT A SPECIAL PROSECUTOR
June 12, 1989	—MOTION TO CONTINUE
June 12, 1989	—NOTICE OF APPEAL
June 12, 1989	—NOTICE OF REMOVAL (TO THE UNITED STATES DISTRICT COURT)
June 12-13, 1989	—EXHIBITS FILED WITH NOTICE OF REMOVAL
June 13, 1989	—ORDER OF REMOVAL
US Dist. Court	—MOTION TO REMAND AND FOR SANCTIONS, W/EXHIBITS
US Dist. Court	—NOTICE OF HEARING
US Dist. Court	—AMENDED ANSWER AND COUNTER CLAIM OF UNITED MINE WORKERS OF AMERICA AND DISTRICT 28
US Dist. Court	—RESPONSE TO UMWA TO MOTION TO REMAND
US Dist. Court	—PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO REMAND
June 22, 1989	—ORDER OF REMAND

Date	Proceedings
June 13, 1989	—MOTION TO REINSTATE SPECIFICATION 76 TO FIFTH RULES TO SHOW CAUSE
June 13, 1989	—BILL OF PARTICULARS
June 27, 1989	—NOTICE OF HEARING
June 27, 1989	—NOTICE OF HEARING
June 27, 1989	—MOTION TO STRIKE AND DEMURRER TO ANSWER AND COUNTERCLAIM
Supreme Court	—PETITION FOR RELIEF FROM INJUNCTION
Appeals Court	—BRIEF IN OPPOSITION TO PETITION
Supreme Court	—BRIEF IN OPPOSITION TO PETITION
June 29, 1989	—ORDER OF COURT OF APPEALS
June 30, 1989	—ORDER OF SUPREME COURT
June 30, 1989	—AMENDED NOTICE OF HEARING
July 03, 1989	—PLAINTIFFS' MEMORANDUM ON THE FINES FOR PRE-MAY 17 VIOLATIONS
July 6, 1989	—SIXTH MOTION FOR RULE TO SHOW CAUSE
July 6, 1989	—RULE TO SHOW CAUSE—INT'L
July 6, 1989	—RULE TO SHOW CAUSE—DIST.
July 12, 1989	—MOTION FOR A CONTINUANCE
July 12, 1989	—MEMORANDUM IN SUPPORT OF MOTION FOR CONTINUANCE OF TRIAL OF SIXTH RULE TO SHOW CAUSE
July 12, 1989	—REQUEST FOR PRODUCTION OF DOCUMENTS

Date	Proceedings
July 12, 1989	—MOTION OF DEFENDANTS FOR EXPEDITED RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS
July 12, 1989	—BILL OF PARTICULARS
July 12, 1989	—MOTION OF DEFENDANTS FOR EXPEDITED BILL OF PARTICULARS
July 12, 1989	—INTERROGATORIES TO PLAINTIFFS
July 12, 1989	—MOTION OF DEFENDANTS TO FILE AMENDED ANSWER AND ADDITIONAL DEFENSIVE PLEADINGS
July 13, 1989	—REQUEST FOR SUBPOENA DUCES TECUM
July 14, 1989	—AMENDED ANSWER AND PLEA IN EQUITY OF DEFENDANTS
July 14, 1989	—MOTION OF DEFENDANTS TO DISMISS SIXTH RULE TO SHOW CAUSE
July 14, 1989	—MOTION OF DEFENDANTS TO RECONSIDER ORDER OF JUNE 7, 1989
July 17, 1989	—DEFENDANTS' REPLY TO PLAINTIFFS' MEMORANDUM ON THE FINES FOR PRE-MAY 17 VIOLATIONS
July 18, 1989	—PLAINTIFFS' ANSWER TO DEFENDANTS' BILL OF PARTICULARS
July 18, 1989	—PLAINTIFFS' ANSWER TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS
July 18, 1989	—ANSWERS TO INTERROGATORIES
July 18, 1989	—NOTICE OF FILING OF TRANSCRIPTS
July 18, 1989	—RESPONSE TO REQUEST FOR RECORDS

Date	Proceedings
July 25, 1989	—MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS SIXTH RULE
July 25, 1989	—WITH APPENDICES, A, B & C
July 25, 1989	—NOTICE OF ARGUMENT ON MOTION TO AMEND ANSWER
July 25, 1989	—NOTICE OF FILING AUTHORITIES
July 25, 1989	—NOTICE OF FILING DOCUMENTS
July 26, 1989	—PLAINTIFFS' MEMORANDUM OPPOSING DEFENDANTS' MOTION TO DISMISS SIXTH RULE
July 27, 1989	—THIRD ORDER ADJUDICATING DEFENDANTS IN CONTEMPT
August 7, 1989	—MOTION FOR MODIFICATION OF JULY 27, 1989 ORDER
August 8, 1989	—MOTION TO SET ASIDE ORDER OF JULY 27, 1989, AS BEING CONTRARY TO THE LAW AND EVIDENCE
August 8, 1989	—NOTICE OF FILING TRANSCRIPTS
August 11, 1989	—NOTICE OF APPEAL
August 11, 1989	—NOTICE OF FILING OF APPEAL BOND
August 14, 1989	—PLAINTIFFS' MOTION TO AMEND ORDER OF JULY 27, 1989
August 16, 1989	—AMENDMENTS AND SUPPLEMENTATION TO MOTION OF DEFENDANTS TO SET ASIDE ORDER OF JULY 27, 1989, AS BEING CONTRARY TO THE LAW AND EVIDENCE
August 17, 1989	—ORDER DENYING POST-TRIAL MOTIONS AND AMENDING ORDER OF JULY 27, 1989

Date	Proceedings
August 25, 1989	—NOTICE OF APPEAL
August 25, 1989	—NOTICE OF FILING APPEAL BOND
August 25, 1989	—BOND FOR COSTS
July 21, 1989	—PICKET REPORTS
	EVIDENCE ENTERED ON BEHALF OF DEFENDANTS
July 21, 1989	—SIX BOOKS “Indicating Service of Two Court Orders—
	1) Amended Injunction
	2) Second Order Adjudicating Defendants in Contempt dated June 7th, 1989
July 21, 1989	—TWO BOOKS “Indicating Service of Two Court Orders—
	1) Amended Injunction
	2) Second Order Adjudicating Defendants in Contempt dated June 7th, 1989
July 21, 1989	EXHIBIT NO. 3 LIST OF UMWA MEMBERS previously listed “Not Mailable”
July 21, 1989	EXHIBIT NO. 4 LIST OF UMWA MEMBERS Previously listed “Not Mailable”

* * * *

Date	PLEADINGS AND ORDERS
08/17/89	ORDER Denying Post-Trial Motions and Amending Order of July 27, 1989
09/20/89	ORDER Extending Injunctions
09/22/89	Writ of Fieri Facias
09/26/89	Writ of Fieri Facias
10/02/89	Writ of Fieri Facias
10/02/89	Notice to Debtor-How to Claim Exemption
10/21/89	ORDER of Removal (U.S. District Court)
10/24/89	Letter to Mr. Gilmer from Mr. Massie (Summons to Answer Interrogatories)
10/24/89	Letter to Mr. Gilmer from Mr. Massie (Subpoena Duces Tecum)
10/24/89	Affidavit Pursuant to Sec. 8.01-506.1 of the Code of VA
10/24/89	Application & Certificate Pursuant to Sec. 8.01-506 of the Code of Virginia
10/24/89	ORDER Adjudicating Discovery Motions
10/25/89	Rule to Show Cause (UMWA)
10/25/89	Ninth Motion for Rule to Show Cause
10/26/89	Letter to Clerk from Dominion Bank (RE: UMWA Account)
10/30/89	Motion to Set Aside <i>Fifth</i> Order Adjudicating Defendant in Contempt
11/01/89	Limited Special Appearance and Motion to Quash Debtor Interrogatories
11/01/89	Proof of Service (Notice of Lien UMWA)
11/01/89	Proof of Service (Notice of Lien UMWA)
11/06/89	Notice

Date	PLEADINGS AND ORDERS
11/06/89	Notice of Appeal <i>Fifth</i> Order
11/06/89	Notice of Filing Appeal Bond
11/06/89	Bond of Costs
11/09/89	Motion For Stay and Continuance
11/10/89	Plaintiffs' Opposition To Defendants' Motion for A Stay and Continuance
11/13/89	Plaintiffs' Opposition to Defendants' Motion for a Stay and Continuance
11/13/89	Letter from Merrill Lynch to Clerk (RE: UMWA accounts)
11/13/89	Motion of Defendants to Dismiss <i>Ninth</i> Rule to Show Cause
11/13/89	Demand for Trial by Jury
11/17/89	<i>Tenth</i> Motion for Rule to Show Cause
11/17/89	Rule to Show Cause
11/22/89	Request for a Trial by Jury
12/01/89	Request for Subpoena Duces Tecum
12/01/89	Subpoena Duces Tecum
12/01/89	Summons to Answer Interrogatories
12/07/89	Request for a Trial by Jury
12/07/89	Motion of Defendants to Dismiss <i>Tenth</i> Rule to Show Cause
12/12/89	Summons to Answer Interrogatories (Dist. 28 UMWA)
12/15/89	Proof of Service (Dist. 28 UMWA)
12/15/89	Proof of Service (Dist. 28 UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)

Date	PLEADINGS AND ORDERS
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
12/22/89	Writ of Fieri Facias (International Union, UMWA)
01/18/90	Order (Interpleaser—UMWA Relief Fund)
03/21/90	Letter to Mr. Gidmer from Mr. Shults
05/22/90	Letter to Mr. Gilmer from Mr. Triolo
05/29/90	Subpoena Duces Tecum
06/01/90	Letter to Mr. Gilmer from Mr. Triolo
08/22/90	Opinion Letter from Judge McGlothlin to Mr. Hodges, Mr. Massie, Mr. Vergara, Jr., Mr. Shults and Mr. Haviland

Date	PLEADINGS AND ORDERS
09/04/90	Notice
09/07/90	Amended Notice
09/10/90	Defendants' Renewed Motion for Recusal
09/10/90	Memorandum in Support of Motion for Order Suspending Execution of Judgment and/or Stay of Collection Pending Appeal
09/10/90	Joint Motion for Order Suspending Execution of Judgment and/or Stay Collection Pending Appeal
09/10/90	Order
09/11/90	Order
09/12/90	Letter to Judge McGlothlin from Mr. Haviland
09/13/90	Certificate of Satisfaction of Judgments and Orders
09/13/90	Order
09/14/90	Order
09/18/90	Order
09/18/90	Notice of Appeal (Order 9/11/90)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17
09/18/90	Notice of Appeal (Order entered 09/11/90)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17

Date	PLEADINGS AND ORDERS
09/18/90	Notice of Appeal (Order 9/18/90)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17
09/18/90	Notice of Appeal (8th Order)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17
09/18/90	Notice of Appeal (7th Order & Order entered 09/11/90)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17
09/18/90	Notice of Appeal (6th Order—Order of Sept. 11, 1990 and Order Dec. 15, 1989)
09/18/90	Bond for Costs
09/18/90	Notice of Filing Appeal Bond Pursuant to Rule 5A:17
10/23/89	ORDER—Concerning money paid into court from "UMWA International Relief Fund" and UMWA District 28 Sub-District Relief Fund"
11/06/89	ORDER—Motion to set aside Order of Oct. 9, 1989
11/15/89	PROOF OF MAILING OF OCT. 9, 1989, Order Entitled "Fifth Order Adjudicating Defendant in Contempt"
11/15/89	DEFENDANT'S EXHIBITS A, B, C & D—Receipts for Certified Mail
11/16/89	SIXTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

Date	PLEADINGS AND ORDERS
11/17/89	NOTICE OF FILING TRANSCRIPTS
11/22/89	NOTICE OF FILING A TRANSCRIPT
12/01/89	APPLICATION AND CERTIFICATE PURSUANT TO § 8.01-506 OF THE CODE OF VIRGINIA
12/01/89	AFFIDAVIT PURSUANT TO SECTION 8.01-506.1 OF THE CODE OF VIRGINIA
12/06/89	MOTION FOR AID AND DIRECTION
12/08/90	NOTICE OF FILING OF TRANSCRIPTS
12/12/89	NOTICE
12/12/89	NOTICE
12/14/89	NOTICE OF APPEAL of SIXTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT
12/14/89	NOTICE OF FILING APPEAL BOND
12/14/89	BOND FOR COSTS
12/15/89	SEVENTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT
12/15/89	ORDER LIQUIDATING FINES UNDER SIXTH CONTEMPT ORDER
12/15/89	EIGHTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT
12/20/89	NOTICE
12/20/89	NOTICE
12/21/89	OPPOSITION TO PROPOSED ORDER CONCERNING COMPENSATION OF "SPECIAL COMMISSIONERS"
12/21/89	ORDER—Vacation of Fines
12/28/89	OBJECTION TO SECOND STATEMENT OF THE SPECIAL COMMISSIONERS

Date	PLEADINGS AND ORDERS
01/05/90	MOTION TO SET ASIDE ORDER OR DEC. 15, 1989 AS BEING CONTRARY TO THE LAW AND EVIDENCE
01/05/90	MOTION TO POSTPONE HEARING
01/16/90	NOTICE OF APPEAL—ORDER LIQUIDATING FINES UNDER THE <i>SIXTH</i> CONTEMPT ORDER
01/16/90	NOTICE OF APPEAL— <i>EIGHT</i> ORDER ADJUDICATING DEFENDANT IN CONTEMPT
01/16/90	NOTICE OF APPEAL— <i>SEVENTH</i> ORDER ADJUDICATING DEFENDANT IN CONTEMPT
01/16/90	BOND FOR COSTS
01/16/90	BOND FOR COSTS
01/16/90	BOND FOR COSTS
01/16/90	NOTICE OF FILING APPEAL BOND
01/16/90	NOTICE OF FILING APPEAL BOND
01/16/90	NOTICE OF FILING APPEAL BOND
02/22/90	ORDER
03/14/90	ORDER
03/14/90	ORDER
* * * *	
08/22/89	Motion to Set Aside Finding of Contempt and to Consider the Lawfulness of Two Picket Locations
08/29/89	7th Motion for Rule to Show Cause
08/31/89	Rule to Show Cause
08/31/89	Motion of Defendants for Court Approval of Form to be Used as Acknowledgment of Proof of Service, Court Orders
09/05/89	Motion to Supplement 7th Rule

Date	PLEADINGS AND ORDERS
09/05/89	Interrogatories & Production Request
09/05/89	Motion for Continuance
09/06/89	Designation of Specifications for Trial, Sept. 13 & 14, 1989
09/06/89	Affidavit
09/06/89	Affidavit
09/09/89	Motion to Establish Picket Locations & Expand Number of Pickets at Existing Sites
09/08/89	Motion to Quash Subpoenas
09/08/89	Letter to Judge McGlothlin from Mr. Kindig
09/09/89	Motion for Expedited Discovery
09/09/89	Motion to Dismiss or, Alternatively, Motion for a Bill of Particulars
09/11/89	Letter to Judge McGlothlin from Mr. Haviland and Mr. Shults
09/11/89	Answer to Defendant Interrogatories and Production Request
09/11/89	Designation for Specifics for Trial Sept. 18 & 19, 1989
09/12/89	Motion to Quash Subpoena Served on John J. Banovic
09/12/89	Defendants' Response to Discovery
09/12/89	Motion of Defendants to Dismiss 7th Rule to Show Cause
09/12/89	Bill of Particulars
09/14/89	Motion to Extend Injunctions
09/18/89	Affidavit of John J. Banovic
09/18/89	Defendants' Motion to Dissolve or Modify Injunction

Date	PLEADINGS AND ORDERS
09/18/89	Memorandum in Support of Motion to Dissolve or Modify Injunction
09/21/89	4th Order Adjudicating Defendants in Contempt
09/22/89	Notice of Filing Transcript
09/27/89	Motion to be notified of Court Proceedings
09/28/89	Motion to Shorten Time for Defendants' Discovery Response
09/28/89	8th Motion for Rule to Show Cause
09/28/89	Rule to Show Cause
09/28/89	Affidavit
09/28/89	Motion for Rule to Show Cause International Officers & Executive Board Members
09/28/89	Rule to Show Cause Officers & Executive Board Members
10/02/89	Notice
10/02/89	Motion to Set Aside Order of July 27, 1989
10/02/89	Motion to Vacate Portions of April 21, 1989 Injunction
10/02/89	Supreme Court Order
10/04/89	Motion for Recusal
10/04/89	Motion for Injunction
10/04/89	Motion to Quash Execution
10/06/89	Supreme Court Order upon a Petition for Writ Prohibition
10/09/89	Memorandum in Support of Appointment of Special Commissioners
10/09/89	5th Order Adjudicating Defendants in Contempt
10/19/89	Reply Memorandum
10/11/89	Order

Date	PLEADINGS AND ORDERS
10/11/89—Order	
10/11/89—Order	
10/11/89—Order	
10/11/89—Notice of Hearing	
10/11/89—Notice	
10/13/89—Notice of Appeal 4th Order Adjudicating Defendant in Contempt & Order denying Defendants' Motion to Set Aside Order (9-21-89) Entered October 11, 1989	
10/13/89—Notice of Filing Appeal Bond	
10/13/89—Bond for Cost	
10/13/89—Notice of Taking Depositions	
10/16/89—Motion to Quash Notice of Hearing or Alternatively, for Protective Order	
10/16/89—Response to Request for Production of Documents	
10/16/89—Answer to Interrogatories	
10/16/89—Response to 2nd Request for Admissions	
10/16/89—Motion to Quash Deposition, Notice & Subpoena Duces Tecum & Motion for Protective Order	
10/16/89—Motion to Have Matters Taken as Admitted & Motion to Compel Discovery	
10/16/89—Notice	
10/16/89—Request for Subpoena Duces Tecum	
10/17/89—Motion for Modification of Portions of Injunction Pertaining to Service by Attorneys	
10/19/89—Request for Subpoena Duces Tecum	
10/20/89—1st Report of Special Commissioners	
10/20/89—Notice of Removal	

Date	PLEADINGS AND ORDERS
10/20/89—Proof of Mailing of Sept. 21, 1989 Order Entitled "Fourth Order Adjudicating Defendant"	
10/23/89—Motion of Defendants to Dismiss 8th Rule to Show Cause	
10/23/89—Memorandum in Support of Demand for Trial by Jury	
10/23/89—Demand for Trial by Jury	
10/23/89—Motion for Recusal	
10/23/89—U. S. District Court Order Remanding back to Russell Co	
10/23/89—Motion for Postponement	
10/25/89—9th Motion for Rule to Show Cause	
10/30/89—Motion to Set Aside 5th Order Adjudicating Defendants in Contempt as Being Contrary to the Law and Evidence	
10/30/89—2nd Report Special Comrs	

CIRCUIT COURT OF RUSSELL COUNTY

Case No. (Chancery) 12486

CLINCHFIELD COAL CO., *et al.*

v.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AM., *et al.*

August 22, 1990

By JUDGE DONALD A. McGLOTHLIN, JR.

This matter is before the Court upon the defendant's motion to set aside the December 15, 1989, orders previously entered by this Court, upon the parties' joint motion for "Order Re Dismissal" and upon the several representations of counsel and memoranda filed in support of the parties' positions herein. The Court should note also that two memoranda have been filed by the Center on National Labor Policy, Inc., as *amicus curiae*, in opposition to the plaintiffs' and defendants' joint motion.

On December 15, 1989, this Court entered three orders, one liquidating prospective fines under its sixth contempt order, and two others adjudicating the defendant in contempt and liquidating portions of the prospective fines which had been previously announced on May 16 and June 2, 1989. On January 5, 1990, at 11:30 a.m., the defendants filed a motion to set aside these three orders as being contrary to the law and the evidence along with a motion to postpone the hearing on the motion to set aside. At this time the parties announced a tentative settlement of the strike "underlying this action." The Court entered its order that day temporarily suspending the three

orders of December 15, in order to provide the defendant more time to fully present its arguments and the Court more time to consider the motion to set aside and any other motions the parties might file thereafter.

After having considered the argument of counsel and the authorities submitted, it is the opinion of this Court that the defendants' motion to set aside the orders entered December 15, 1989, must be denied.

The evidence presented by the plaintiffs as to each of the allegations of contemptuous behavior proves without question that the International U.M.W.A. was the author of these actions. The fact that some of the evidence as to the defendants' complicity was circumstantial makes it no less competent or convincing.

Nor can the defendants' protestations that these proceedings were criminal contempt hearings change the fact that they were civil in nature. The Court early on announced its purpose in imposing prospective civil fines, the payment of which would only be required if it were shown the defendants disobeyed the Court's orders. That purpose was to compel compliance with the Court's orders which were entered to protect the rights of the plaintiffs and the public. The fines were conditional, and it was within the defendants' sole power to avoid payment of the fines.

The Supreme Court of the United States in *United States v. United Mine Workers of America*, 330 U.S. 258, 304-305, 67 S. Ct. 677, 701 (1947), has specifically sanctioned the imposition of monetary fines payable to the Court to compel a recalcitrant defendant (the same defendant as in this case) to discontinue a strike it had called. The United States Court of Appeals for the Second Circuit has likewise found that the imposition of fines "*in terrorem*" is authorized as a means of securing future compliance with a decree. *Sunbeam Corp. v. Golden Rule Appliance Co., Inc.*, 252 F.2d 467 (2d Cir. 1958). In that case the defendant was ordered to

pay a competitor a \$2,500.00 fine for every future sale of the competitor's product in violation of a consent decree. The fine there, as here, was imposed only conditionally and depended upon the contemnor's future conduct. The contempt sanctions imposed by this Court were civil in nature, not criminal. Thus, defendant had no right to trial by a jury or to a public prosecutor.

Defendants complained of the Court's appointment of counsel for plaintiff as Special Commissioners to collect the fines imposed. This issue is now moot as Messrs. Hedges and Massie have been relieved of those duties.

The remaining grounds assigned by defendants in its motion to set aside are without merit, and the Court overrules the motion. The Court would comment, though, that the interpretation of the evidence with regard to the existence of "roving pickets" and the understanding of the bases of the Court's findings argued by defendants' counsel belie their intelligence and are tributes to their inventiveness. This Court in its earlier orders specified the sites where picketing would be authorized along with the number of pickets allowed at each site. The evidence presented at all of the hearings showed a constant patterns of pickets locating themselves at various unauthorized places from which they would move to another picket site when police or others attempted to investigate incidents. The evidence of moving or roving picketing was overwhelming.

The parties filed a joint motion for "Order Re Dismissal" on January 24, 1990, when they again represented to the Court that they had come upon a tentative settlement of the strike and asked the Court to rule immediately on this motion even though the proposed agreement had to be submitted to the U.M.W.A. members for a ratification vote, something which had not even been scheduled at that time. The Court conducted two hearings during which it was shown a written agreement entered into by the parties purportedly resolving the many

cases in litigation spawned by the strike. At the parties' request, the Court viewed *in camera* a supplemental agreement between them containing portions of their pact which the International Union desired not be made public. Certain "submissions" were made by the defendant in which it proposed to have its membership perform community service work in order to purge itself of contempt. On February 12, 1990, the Court rules from the bench that it would not, upon the evidence, the representations and the argument presented to that date, vacate its orders imposing the civil fines merely because the parties agreed it should do so. Thereafter, an additional "submission" was filed by the defendant, increasing the number of hours of community service proposed, together with several additional memoranda by Clinchfield, the U.M.W.A. and the Center on National Labor Policy, Inc. (as *amicus curiae*). Subsequently, there was also proposed to the Court a hearing at which the top leadership and management of the parties would appear to discuss various issues with the Court. The Court was, of course, available for such a hearing, but none was ever scheduled even though several weeks passed after the proposal was made. It appearing that nothing further will be forthcoming on these issues, the Court considers them ripe for adjudication.

The parties have requested dismissal of this lawsuit and dissolution of the injunctions entered. There is no question that upon reaching a settlement of their dispute, these litigants are entitled to have such requests granted. The Court will, therefore, enter an order dismissing plaintiffs' Bill of Complaint for injunctive relief and dissolving all injunctions insofar as they grant relief to the plaintiffs.

The parties have also requested vacation of all orders imposing fines for contempt, including not only those entered December 15, 1989, but also judgments entered more than twenty-one days prior to the filing of the motion. Virginia Supreme Court Rule 1:1 provides that "All final judgments, orders and decrees . . . shall remain

under the control of the trial court for twenty-one days after the dates of entry, *and no longer.*" (Emphasis supplied.) Defendants have noted appeals of the orders entered before December 15, 1989, and they are now before the Court of Appeals of Virginia. Having taken the position that these orders are final and therefore ripe for appeal (a position with which this Court agrees), the defendants cannot now argue to the contrary. These orders are beyond the reach of this Court and shall remain undisturbed.

Turning to the December 15 orders now, the Court is told that because this is a civil suit, the litigants are entitled, upon announcing a settlement of their disputes, to have the contempt proceedings dismissed and all fines previously liquidated vacated. The Court is cognizant of the principles of law upon which the argument is founded but disagrees with the contention that they require in this case the action requested of the Court.

The underlying action upon which these civil contempt proceedings are dependent is, of course, plaintiffs' suit for injunctive relief, the purpose of which was to obtain the preventative power of a court of equity (1) to protect the company from the power of a large labor union unlawfully used against it, and (2) to protect its employees, servants, contractors, their families and members of the general public from defendants' unlawful acts. Clinchfield sought government intervention to prevent the obstruction of private and public rights of ways; the intimidation and coercion of any person's entering or leaving plaintiffs' worksites; the threatening and assaulting of persons; the throwing of rocks and other missiles at vehicles or persons; the placing of devices designed to puncture tires of automotive traffic on private and public roads; the obstruction of the vision of those operating motor vehicles; the following or trailing of company employees and their families, and so on. The Court granted much of the relief requested finding defendants were interfering

with the rights of the plaintiffs *and* those of the general public.

Moreover, with the passage of time, defendants' strategy for conducting the strike shifted from acts affecting primarily the company to acts affecting both those members of the public associated with the company and those who had no connection with any of the litigants. The focus and loci of defendants' unlawful conduct shifted from company property and facilities to the public highways and private homes and businesses. So, as the strike proceeded, the protection sought from and granted by the Court was more and more for the general public. Concomitant action by the executive branch of this Commonwealth's government brought scores of Virginia State Police officers, Department of Transportation workers, etc., and millions of dollars' worth of equipment to the task of protecting the rights of not only the litigants, but the general public as well. Thus, when the Court found it necessary to liquidate the prospective fines imposed, and when defendant strenuously objected to awarding them to Clinchfield, the bulk of the fines were made payable to the Commonwealth and the two counties most heavily affected by the unlawful activity. From its institution, and more and more as it proceeded, this case has involved the protection of the rights of the general public in addition to those of the plaintiffs. In *Gompers v. Buck Stove & Range Co.*, 221 U.S. 418 (1911), the United States Supreme Court employed an analysis of the purpose of a suit and the relief awarded in determining whether litigants are entitled to a dismissal of contempt proceedings. Although in that case, the Court rules in favor of the requested dismissal, analysis of the purpose of this suit and that the nature of the relief awarded shows there are substantial differences in the facts there and here, differences so significant as to compel an opposite result.

Additionally, the motion for "Order Re Dismissal" was not made until January 24, 1990, nineteen days after the

Court agreed to suspend the operation of its December 15, 1990, orders concerning contempt. Even at that time, their request was not to dismiss the cause, but to enter an order stating the Court's *intention* to dismiss it upon the ratification of the then tentative labor contract and cessation of the strike. The Court's rulings finding the defendant guilty of several counts of contempt, liquidating numerous fines and apportioning them among the plaintiff, Dickenson and Russell Counties and the Commonwealth were announced from the bench December 8, 1989, and reduced to written form by the orders entered December 15, 1989. The effects of these rulings were suspended by order entered January 5, 1990, to allow the Court time to consider defendants' motion to set aside. The request for vacation of the contempt fines came too late.

What is more, the parties announced only *tentative settlement* of their dispute. Even the language of the proposed order was conditional, only to be given effect should the proposed labor contract be ratified by the U.M.W.A. membership. Defendants even argued that the Court's entry of the proposed order was a condition prerequisite to the submission of the contract proposal to its membership. Although the Court is aware that the proposal was indeed ratified by the unions' membership in February, 1990, and the Court assumes that the strike and picketing against plaintiffs has indeed ceased, the Court feels strongly that the parties attempted by these motions to set aside and to dismiss and vacate to manipulate the Court's decision making process and the orderly disposition of these matters. Basically, the parties attempted to extort the desired ruling from the Court by making it appear final settlement of this bitter, violent labor dispute was contingent upon that favorable ruling. The parties did not act in good faith.

Although the law favors the resolution of disputes by compromise and settlement rather than by litigation, *Bangod Punta Operations, Inc. v. Atlantic Leasing Ltd.*,

215 Va. 180, 207 S.E.2d 858 (1974), the reason for this rule is instructive. Settlement is less expensive and less time consuming. It saves time, effort and expense of the parties, the attorneys and the courts. Compromise and settlement is said to be conducive to more amicable relations between the parties. 15 Am. Jur. 2d *Compromise and Settlement*, § 6. Here, no time can be saved nor expense avoided. The parties' time, effort and money have already been expended; nor will the attorneys' or Court's time be saved—it has already been consumed; nor will future relations of the parties be affected when both parties have joined in the motion to dismiss/vacate and done their utmost to obtain a favorable ruling.

Here, the parties rested their cases, submitted the issues to the Court, and the Court rules and entered its orders. In effect, the original parties came upon a settlement of their differences after judgment. Had the rulings been such that Clinchfield was the sole beneficiary of the judgments of the Court, it would be simple enough for the parties to effect their object. The judgments, however, made the Commonwealth and two of its political subdivisions recipients of portions of the liquidated fines. Due to the nature of defendants' unlawful conduct, the nature of the relief requested by Clinchfield, and the protection the Court granted, the public, the citizens of this Commonwealth, were necessarily intimately affected and were the intended beneficiaries of the suit and the relief granted. There is a decisive difference between such a case and one involving only the litigants or one in which the Court-ordered protection is focused solely on the litigants. The Supreme Court of the United States has recognized that the payment of fines to the Court is proper remedial relief when payment can be avoided by compliance with the Court's order. *Hicks v. Feioks*, 485 U.S. 624, 99 L. Ed. 2d 721 (1988). Certainly the same is true of fines the Court makes payable to other branches of the government. Where, as here, the public's welfare is so intimately involved and the Court has granted civil con-

tempt relief payable in effect to the public, and where judgment has been announced and entered, the public's interest must be considered. There can be no "settlement" without the consent of at least all those whom the relief granted is intended to benefit. No such consent is present in this case. Neither the Commonwealth, nor the two counties, nor the Court has agreed to the vacation of these fines.

The Court must also take into consideration the fact that the defendants have made no meaningful effort to purge their contempt. The offer to have its member perform a paltry 10,000 or even 20,000 hours of community service to atone for the repeated, massive, violent violations of this Court's orders is an affront to our system of law and to the Court. Likewise, if ever a party has come to the bar seeking equity with unclean hands, the defendants in the case have. Not only have they violated the injunctions put down to protect the plaintiffs and the public, but they have refused to abide by the Court's judgments, e.g. directing payment of fines and service of the orders upon its membership. The International, U.M.W.A. remains defiant and deserves no relief.

This Court's judgments will be given effect to the extent that consent to vacate them is lacking. As the plaintiffs have indicated their consent, and since they can easily have any judgment in their favor marked "satisfied" by the Clerk, so much of the fines as were directed payable to Clinchfield shall be vacated. The remainder shall be paid by the defendants with interest from December 15, 1989. The suspension of those portions of all orders adjudicating contempt, liquidating fines against the defendants, and directing the method and time of payment of the fines shall be terminated and they shall remain intact and in effect. All fines liquidated by the orders entered December 15, 1989, shall be payable to the recipients through the Clerk of this Court no later than ten days after the entry of the order commemorating the rulings herein.

The Court will appoint John L. Bagwell, Esq., of Grundy, Virginia, to act in the place and stead of the Commonwealth's Attorneys of Russell and Dickenson Counties, who have both asked to be disqualified in all these cases, and to act as Special Commissioner in Chancery for the purpose of collecting any unpaid fines due and payable to those political subdivisions and the Commonwealth at a fee to be approved by the Court. The Court shall further direct Mr. Bagwell to take all actions necessary to immediately begin collection of any fines remaining unpaid after the date specified above and to report to the Court his efforts and the results of those efforts at collection.

In its comments from the bench in response to the motions disposed of by the rulings in this opinion, the Court expressed its concern over the need to establish and protect the rule of law and the authority and power of courts to enforce the law. The conduct of the defendants throughout the history of this litigation has certainly given rise to grave concerns over whether they will be governed by the law and the institutions created by to administer the law, or whether they will be permitted to operate outside the rules society establishes for the conduct of affairs amongst its members. Because the judgments heretofore entered are civil in nature and because the contempt proceedings previously had were for the purpose of persuading the defendants to stop violating the rights of plaintiffs and the citizens of these communities and because there is evidence before the Court that the defendants have violated several of this Court's orders and because it is imperative that if the defendants have knowingly violated these orders, they must be made to realize the consequences thereof, the Court is of the opinion that criminal contempt proceedings must be instituted to determine whether the defendants or its members have been guilty of knowingly violating these orders.

[1]

VIRGINIA:

IN THE CIRCUIT COURT
OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs
vs:

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,
Defendants

TRANSCRIPT OF HEARING

February 12, 1990

APPEARANCES:

KARL K. KINDIG, Esq.
Lebanon, Virginia

STEPHEN M. HODGES, Esq.
WADE W. MASSIE, Esq.

Abingdon, Virginia

Counsel for Plaintiffs

ROBERT E. STROPP, JR., Esq.
Washington, D.C.

JAMES J. VERGARA, Jr., Esq.
Hopewell, Virginia

Counsel for Defendants

[2] The within styled cause came on to be heard on this 12th day of February, 1990 before the HONORABLE DONALD A. McGLOTHLIN, JR. Judge of the Russell County Circuit Court, and the following proceedings were had, to-wit:

THE COURT: This is in the matter of Clinchfield Coal Company versus the International UMWA on a Motion that was filed jointly by the parties for the Court to dismiss the proceedings in this case and all Orders concerning fines. First, I should ask if the Plaintiffs have any evidence or any argument that they want to make in the matter. And I will defer to the Counsel.

MR. KINDIG: Your Honor, we have no evidence present in this matter. We do support the Joint Motion. We certainly don't wish to trivialise the involvement of the community, but in the end we view it as primarily a matter of private litigation between us and the Union. And we have achieved a comprehensive resolution of our labor dispute and believe that the Order that we have jointly asked for will help us bring an end to this labor dispute in the fashion that will lead to—in a fashion that will lead to [3] labor peace in this area and be ultimately in the public interest.

THE COURT: Thank you, Mr. Kindig. Does Counsel for the Defendants care to make a statement or do you have additional information that you would like the Court to consider?

MR. VERGARA: Your Honor, with the Court's permission, first I would, according to the Rules of the Supreme Court, ask the Court to allow Mr. Robert Stropp, General Counsel of United Mine Workers, to argue the Motion.

THE COURT: Is there any objection?

MR. KINDIG: No.

THE COURT: The Court is familiar with Mr. Stropp's qualifications and I welcome you before the Bar. And yes, you may present argument.

MR. STROPP: Thank you, Your Honor. May it please the Court, before the Court is the Joint Motion that was referred to by Mr. Kindig. The parties have reached a comprehensive settlement. And as a part of that settlement to resolve not only the Collective Bargaining Agreement, but it is to resolve all issues between the parties. The Joint Motion, and attached to the Joint Motion we have an agreed [4] Joint Order that we submit for Your Honor's consideration to dismiss the lawsuit and to set aside the fines.

Very briefly at this point, the grounds as set forth in the jointly proposed Order are that the fines that the Court has thus far imposed have always been characterized as coercive civil contempt fines. We submit, Your Honor, as a matter of law, the underlying purpose is to ensure or coerce compliance with the Court's Orders, and that those Orders are directed to certain picket line and strike activity and that upon cessation of the strike ratification by the Union's membership of those purposes, as a matter of law, will no longer be present. And thus, it would be appropriate to, as a matter of law, to set aside the fines.

Secondly, we agree with Mr. Kindig that this lawsuit has been a lawsuit between private parties. And while we do have certain matters on appeal, contending that the fines imposed were criminal contempt fines, the case has proceeded consistently along the lines as a private lawsuit, and that the parties to the [5] lawsuit have agreed to a dismissal and should be accorded the same rights as other parties in private litigation.

And finally, and again very briefly, we think, Your Honor, that it certainly is within the best interests of not just the parties to this lawsuit, but to the members of the community at large and the members of the Union and the employees of Pittston, the State and Counties involved. And we can go as far as to say the Federal Government, with respect to its participation in this litigation; that it is in the best interest of all those concerned that the healing process commence as soon as possible and

hopefully that would be upon ratification of the parties' Collective Bargaining Agreement by the membership of the Union.

Your Honor, if I could just to—if I could digress a minute just to explain to the Court the part we have done in chambers about the settlement that the parties agree. The settlement approach, at least from the standpoint of the UMWA, was very complex in one respect. We recognized, and I believe [6] Pittston did as well, that the issues and particularly the health care issues, were very complicated issues. We had attempted for quite some time and then with the assistance of Judge Glen Williams, as a mediator, to meet and reach an agreement, a Collective Bargaining Agreement, and we were not successful there. The Secretary of Labor, Elizabeth Dole, became quite concerned about the progress of this strike and the community involved and assigned a mediator, William Usury, who was a former Secretary of Labor. And at Mr. Usury's urging, I believe both Pittston and UMWA committed themselves to devote all energies and resources to settle with each other their—we recognized that there were many other participants and some more directly affected than others, involved in this labor dispute. The communities at large had, the State and the Counties involved, they were all affected. Nationally, we suggest that there has been some impact. This Court has certainly been impacted by this strike. The Federal Court, with Judge Williams, and various Courts in the State of [7] West Virginia—and States of West Virginia and Kentucky. We had very complex collective bargaining issues on the one hand. But arising out of the strike, we had almost equally as complex lawsuits. We believed in the beginning that it would not, we could not merely resolve our collective bargaining issues and commence a relationship but still have lingering all the litigation that we had initiated, both Pittston and United Mine Workers of America; that we commenced negotiations with the premise that if we had a future relationship, we would

have to resolve all the litigation. We could not have participating negotiations, as I am sure Your Honor might appreciate. We couldn't have the National Labor Relations Board sitting in the negotiations and all the various Courts, including Your Honor, in an attempt to resolve the litigation aspect. We had listed for Your Honor, and we showed Your Honor, I believe, the litigation settlement that we had reached, that specified the numbers of cases that we have the pleadings, ranging from a very complex litigation that the Union had [8] initiated in the United States District Court for the District of Connecticut. The Union also was involved in certain proxy litigation in the District Court in the District of Columbia. Pittston had its litigation against the United Mine Workers here in Virginia, in the State and Federal Courts. And I believe in three or four Counties, as well as we had litigation in West Virginia, in both Federal and State Courts. And not the least was the numbers of charges, maybe numbering fifty or so, with the National Labor Relations Board, the agency charged with the expertise of having the expertise to oversee labor relations on a National basis. At the commencement of the strike—and I again apologize for digressing a bit—at the commencement of the strike, the National Labor Relations Board, based upon unfair labor practice charges that the Union had filed, concluded that the strike was an unfair labor practice strike. I mention this only because we showed Your Honor in chambers all those charges that the NLRB considered, many of which involved the commencement of this [9] strike. We began negotiations and actually went right up until Christmas Eve. The negotiators were under very intense pressure. I believe there was a break of one day over Christmas and maybe half a day on Christmas Eve. And then went right back and negotiated through New Year's until approximately 11:30 on New Year's Eve. With the Secretary of Labor, Elizabeth Dole, we finally reached an agreement. I know there was probably, the press of Counsel was wide spread. I think the national

news covered the press conference in Washington the next day announcing that the parties had reached a settlement that involved, not just again the collective bargaining issues, but all the litigation between the parties. Nevertheless, it still took some 24 days after New Year's to iron out the language over the various collective bargaining items and including the litigation settlement. Again on New Year's Eve, Your Honor, we would have extended an invitation to you to appear or to others or other Judges, the NLRB, but this kind of settlement, Your Honor, in all seriousness, I believe could [10] have been reached if we would, if the parties would have been put in a position to negotiate each piece of litigation on a piecemeal basis. We simply believe, in terms of our approach, that that would not have worked. The settlement that we reached and as we have stated to Your Honor is a very fragile one and one that had conditions that must be, required to be met before we, the Union, would proceed to ratification with the membership vote. We met with Your Honor a couple of weeks ago to discuss the instant Motion and agreed upon a proposed Order before the Court today. And Your Honor raised a couple of concerns with respect to this instant Motion. First, there was concern about certain future assurances that the Union might give in order to, in order to hopefully not have the kinds of activities that Your Honor heard, occur in the future. While we have those matters on appeal, nonetheless, we have, I believe, proceeded to recognize Your Honor's concern and would like to introduce for Your Honor's consideration a copy of the agreement we have reached with the National Labor Relations [11] Board that disposed of all the charges before that agency. And I believe you have got a copy. If I could make that part of the record, Your Honor.

THE COURT: This is entitled "Agreement" and dated February 9, 1990, is that correct? Four pages, plus an addendum?

MR. STROPP: Yes sir.

THE COURT: Signed by yourself and Jerry Hunter, General Counsel of the National Labor Relations Board and William Hoffman for the Plaintiffs?

MR. STROPP: Yes sir.

THE COURT: All right, I have that and that will be made a part of the record as an Exhibit, called Defendants' Exhibit 1. There was also an appendage that the Court received entitled, "Court Order."

MR. STROPP: Yes sir.

THE COURT: Do you wish that to be made a part of that agreement?

MR. STROPP: Yes sir, Your Honor, we would.

THE COURT: All right then, that would be Defendants' Exhibit 2.

MR. STROPP: Very briefly, Your Honor, the NLRB [12] Agreement 1, incorporating the Court Order of the Fourth Circuit extends to the State of Virginia the purgation provisions contained in that Court Order, which are designed to require the International and its membership, upon the commencement of a strike, to go through certain notice and training obligations to those members who commence picketing and engaging in a strike. There is, again there is, I believe, a training film referred to with respect to peaceful and non-violent picketing. The Order further regulates the activity to be engaged upon on the picket line and calls for contempt sanctions to be imposed on violation of—any violation of that Court Order. Specially addressing Your Honor's concerns about future assurances, I believe you would find that there are prospective fines included in the Fourth Circuit Court Order. I would say this, though, Your Honor, the agreement we reached with the National Labor Relations Board, Exhibits 1 and 2, that was strictly voluntary on the part of United Mine Workers of America. We do not believe that given the current [13] status of the cases before the Court, that we otherwise would have been required to enter into that type of settlement. And we did so, however, specifically designed to present to Your Honor, your

needs, as well as the needs of other Judges with respect to the future and the future conduct over picketing and strike activity. I would too, if I could, show Your Honor and introduce as Exhibit 3, a copy of a press release.

THE COURT: Any objections?

MR. KINDIG: No.

THE COURT: This will be marked Exhibit 3 for the Defendants.

MR. STROPP: A press release by the General Counsel of the National Labor Relations Board, again the agency charged with administering the National Labor Relations Act which governs picketing and strike activity. The General Counsel, in speaking of our settlement which was reached this past Friday, is quoted in the press release as saying, and I quote, "Expansion of the Circuit Court's decree covering future violations of the National Labor Relations Act and prescribing procedures for future strike [14] activity in Virginia fully remedies the alleged violations and will permit the parties to resume their collective bargaining relationship in an environment free of litigation." Those alleged violations, Your Honor, were all—and you may have heard this argument before—they were duplicative of the claims raised in this lawsuit and the conduct which became the subject of this lawsuit here, as well as in Federal Court with Judge Williams. The General Counsel went on to say, and I will quote again, Your Honor, "In view of the scope and comprehensive nature of the consent decree, the public interest is well served by this settlement." We submit Exhibit 3 for Your Honor's consideration as well.

Again, Judge, we would respectfully point out that the commencement of this strike was determined to be an unfair labor practice strike, based upon the charge brought by the Union against Pittston. We have for Your Honor's consideration and as a part of, in support of this Motion and as a part of an over-all settlement and resolution, the claims [15] in this case, a public statement which I would pose for Your Honor's consideration. I could read it into

the record, if you wish, or hand it over to Your Honor, whatever you would prefer.

THE COURT: It may be well to go ahead and read it.

MR. STROPP: This statement is similar to a statement that was read by Judge Williams many months ago—read to Judge Williams many months ago, accepted by Judge Williams on behalf of Marty Hudson and Jackie Stump, who purged themselves of contempt and were then released from Federal custody. And I am authorized to read this statement, Your Honor, that they—part of the settlement and in support of the Motion to Dismiss, (Reading), "The members of the Union work and live in this community. Most, if not all, have no criminal records. And many have served their country in the military of the United States. They respect this Court and the laws of Virginia and the United States. That we also recognize and understand the authority of this Court, the Union adopts and likewise re-asserts those principles in terms of respect for this Court. [16] This strike has been a difficult time for them, the Union, Pittston and this entire area. While your decisions are thus far not final and are under appeal, members of the Union and the Union realize that this Court has found them guilty of contempt for certain purported conduct. At no time was their conduct intended to show disrespect for this Court or the law. Rather, their actions were an effort to support their belief and their cause. They hope and sincerely request that this Court will join them, Pittston and other Courts, the NLRB and this area in putting this matter behind them in setting aside the fines and dismissing this action, so they will continue to support the UMWA and its members in struggles that are just. It was not their intention, the Union or its members, in the past, nor will it be in the future to intentionally show disregard or disrespect for the Court and the law. And neither will they ask others to do so." That was adopted by the statement read to and accepted by Judge Williams.

In addition, Your Honor, we believe that [17] —we would suggest for your consideration that we would undertake to—in an effort to repair some of communities from the strike—and I say strikes are bad for all, the Union, for the company, all involved. Nevertheless, the Union is prepared to organize a devotion of some 10,000 hours of community service to commence upon the ratification of the Collective Bargaining Agreement and a return to work of the strikers. These community service projects would be directed to the following: Identification of special groups of individuals in need, such as the elderly and handicapped. Persistence with home repair. Support for the development of recreational facilities, such as youth centers for teenagers and children. And any other similar worthwhile projects which might be suggested in consultation with community leaders for Russell and Dickenson Counties. And further, we would propose to work with those community leaders in an effort to carry out these commitments in the most efficient and meaningful manner.

Secondly, and in recognition that the [18] strike benefits available to striking members, which also include health benefits, would ordinarily terminate at the cessation of the strike, upon ratification of the strike and return to work of those working members, there may be some who would not immediately return to work and therefore, those individuals would ordinarily be on a lay off status. Upon cessation of the strike, we would propose that those individuals continue to receive for this 10,000 hours, 30 day period, the strike benefits that would come as if the strike would not have terminated, along with health insurance. The 30 days, Your Honor, is consistent with the 30 day commitment to perform the 10,000 hours. This proposal would allow for, at least an initial transition of those individuals and so that they might make an adjustment for the future.

Secondly, we believe that this might alleviate some of the burden on the Counties, in terms of the support systems that might be available to those individuals, if they

were immediately cut off of selective strike benefits. [19] We would further challenge Pittston to join in with us to match this effort to restoring the communities.

Your Honor, we have finally, in support of the Motion, we would refer Your Honor to letters that have been written to the Court. Letters from the Chairman of the Russell County Board of Supervisors, and likewise, from the Dickenson County Board of Supervisors. Letters written to Your Honor, suggesting that those, any interests that they might have in terms of the fines being paid, payees to the fines, that they would disclaim such interest and that they do not want that kind of interest to be a stumbling block to proceeding to an over-all settlement and a dismissal of the fines.

Similarly, we have— would refer Your Honor to a letter written quite some time ago, in June of 1989. I say to Your Honor it was a letter written by Counsel for Pittston to the Attorney General, again a letter dated June 15, 1989, in which the company requests, requested that the State intervene in this proceeding in order to protect its interest. [20] My understanding from Counsel is that there was an acknowledgment that that letter was received and yet there has been no appearance of the State in this case.

Your Honor, your secretary handed over to us just as we were coming into Court, a letter written to Your Honor dated today. And if I could just read this letter into the record, I would appreciate it.

THE COURT: Any objection to that?

MR. HODGES: No sir.

MR. STROPP: (Reading) "Dear Judge McGlothlin: As the special mediator appointed by the United States Secretary of Labor, Elizabeth Dole, to the UMWA-Pittston dispute, I am writing to offer my insights into the pending collective bargaining settlement, in the hopes that they might assist you in evaluating the current situation. The UMWA-Pittston dispute is the most complex labor dispute which I have mediated. Not only do the

parties have to reconcile competing needs into the traditional collective bargaining arena, but they also had to address pressing problems of health care delivery affecting the industry at large and [21] to resolve an extensive list of NLRB and State and Federal litigation in Courts in Connecticut, Washington, D.C., West Virginia, Kentucky and of course, Virginia. All of these tasks involved a considerable degree of compromises on both sides. One of my main objectives throughout the mediation was not just to achieve a Collective Bargaining Agreement, but also to forge a new cooperative relationship between the parties. It is only when this goal is accomplished that the communities at large will prosper. Thus, from day one, I have urged the parties to look to the future, and not to dwell on the grievances of the past. The parties themselves will determine that this goal will require a resolution of a myriad of outstanding litigation. This litigation does not just involve claims against the Union, such as the case over which you now preside, but also a substantial number of claims against Pittston, claims which now will be of interest and part of the over-all settlement. In the hopes of forging this new relationship, I follow with great interest the actions of these other [22] affected parties and their efforts to make this settlement a reality. I gratify that the NLRB General Counsel and Your Honor and various Federal State Judges and the affected States and Counties have acted in a fashion which has moved the parties closer to ratification. Given these circumstances and my desire to avoid any inappropriate intrusion into the judicial process, I would hope that you, too, would be in a position to give serious and favorable consideration to the parties Joint Motion and proposal in order to dissolve the litigation before you." And that's signed, W. J. Usury, Jr. with copies to President Trumpka and Paul Douglas, CEO, Pittston. We believe that that statement adequately supports the Motion before the Court and it further reflects the position and role that has been taken throughout the course of these settlement proceedings by the United States Government.

In summary, Your Honor, again we have a civil case before the Court. There is a Joint Motion and an agreed Joint Order in this case with the parties urging Your Honor's prompt [23] consideration. We respectfully request that the healing process commence as soon as possible. We believe that there is adequate legal support to dissolve the fines and dismiss this lawsuit, given that the nature of the fines as stated by the Court were Civil course and contempt fines. They were not punitive fines or criminal contempt fines, which otherwise would have been required to be directed to vindicate the authorities which issued them. We suggest as well that the public interest at stake overwhelming weighs in favor of dismissal of this case and dissolution of the fines. And we further submit, Your Honor, and respectively so, that the community service commitments that the UMWA is prepared to make and request that Pittston join with us on, will be the first step toward an active and healing process, which we believe will further the interest of this community and also to further the interests of, as I understand it to be, the industrial development of this community that is hopefully planned for the near future.

We thank Your Honor and appreciate your [24] consideration.

THE COURT: Does Counsel for Plaintiffs have any further comment?

MR. KINDIG: Yes, Your Honor. I would just like to reiterate one thing that was said by Mr. Stropp. That during the many weeks that the parties labored in an attempt to resolve this labor dispute, I can say personally that the interest of the community and the interest of this Court were never far from the parties consideration. I think that the resolution of this case is perhaps one of the most difficult aspects of the over-all labor dispute and the resolution of that dispute. And it is clearly, and it was clear to me at the time that we thought about how to resolve this, that the proposal which we have put before Your Honor today is perhaps not likely to be a popular

one. As a matter of fact, I recall reading in one of the newspapers that I should be subject to professional discipline for supporting this particular Motion. Yet, despite that and having considered this at great length, I came to the conclusion that, and the company which I represent came to the [25] conclusion that this result is appropriate. It is appropriate under the law as a resolution of a private civil dispute between parties and it is ultimately in the public interest. And we would respectfully request that the Chancellor exercise its discretion to grant the Motion which we do have before it, before you today, recognizing that it may be unpopular, but it is my sincere belief that it is the right thing to do. Thank you.

THE COURT: Thank you. First let me ask Counsel to be certain that the Court is operating on the same tack that has been argued here. I take it as offered, the Court has been made aware of all agreements. If not, as to having seen the agreements, certainly I have ~~been~~ made aware of the types and general thrust of the agreements between the two parties, is that correct?

MR. KINDIG: Yes, Your Honor.

MR. STROPP: Yes, Your honor.

THE COURT: I know that there are a lot of people in this room who are waiting very anxiously for the Court's ruling; however, I will digress just a minute to say that this is the first [26] day of the term here in Russell County Circuit Court. And albeit somewhat less mundane, we do have other matters going on. I have a Grand Jury which has just recently completed its work and the Court will of necessity have to take a very, very short recess for approximately five minutes, to receive the report of the Grand Jury and to discharge the Grand Jury and ask them if they have any other report. I must recess this proceeding just briefly. If you would all like to stay in place that will be fine.

RECESS

First of all, I think that we should—with regard, first of all to the conferences that the Court has had with Counsel and because of this case of intense interest by the community at large, I think that it would be well for the Court to review briefly the basic content of those conferences with Counsel.

On January 31st a hearing had been scheduled to begin in the afternoon hours. [27] And the Court had a conference with Counsel from both sides. By agreement of Counsel, during which time certain representations were made to the Court as to what evidence would be produced at the hearing and what proposals were being offered to the Court in support of the Joint Motion to Dismiss, at that time the Court discussed those proposals and the proposed evidence with Counsel. And as Mr. Stropp has indicated, voiced some concern that the Court had with the proposals and with the evidence that had been mentioned. The Court was, as I recall the Court's concern basically revolved around the issue of what feeling or what impression would be left upon others who might find themselves in similar circumstances to that of the Defendants in this case. What others might learn from this case with regard to what activity, what conduct would or would not be acceptable in this community. And to put it in plain language, the Court did not want any person or any organization to feel that this Court's Orders could be controlled by individual parties. I should say the Court's equitable Orders and Contempt Orders [28] could be controlled by either party.

This has been an extremely unusual case. Both Counsel have argued that practically from the first day. It's been unusual in that there are very few precedents that the Court has at its beck and call to follow. It's been probably more unusual because of the facts that have been generated over the past ten months. And by that I refer to the mass violations by members of UMWA, the refusal of the organizational Defendant, UMWA International and the District 28 to obey the lawful Orders of

this Court. The fact that there have been approximately 760 allegations of violations of this Court's Orders by the Defendants, 400 of which the Court has held have been proved beyond reasonable doubt. The others have been dismissed for one reason or the other. It's also been unusual, I am told by Counsel for the Defendants and the Court's response is supposedly unprecedeted in the annals of the U. S. Jurisprudence, referring to the large fines that have been imposed in an attempt to compel compliance with this Court's Orders. It's also been a very ironic [29] case that has taken some ironic turns here of recent past. The Court finds that it is extremely ironic that the parties, the Plaintiffs, who came to this Court back in April practically wringing their hands over the violations that were occurring to their rights and extremely upset over the violence that was being visited upon their property and more importantly, their employees, agents. The same Plaintiffs who came in and asked for extremely harsh treatment directed toward the Defendants by this Court from the very beginning. If I am not mistaken at the first hearing, perhaps the second hearing, fines of One Million Dollars per day against the Defendants were requested, but refused. The same Plaintiffs who have requested the Court very strongly, very urgently to effect harsher measures, stiffer penalties until compliance, against the Defendants, those same Plaintiffs now come into this Court and say now everything is fine. We have reached an agreement. We want Your Honor to wipe everything off the slate and forget the whole thing. It is an incredible irony in this [30] Court's opinion.

The Court has several considerations that it must keep in mind. First, legally the classes of the parties that we have here. We have the Plaintiffs and we have the Defendants. Their interests are pretty obvious to everyone. Obvious, for the most part, to the Court. I want to make it clear for the record that although there has been quite a bit of argument about the negotiations, quite a bit of

mention about the negotiations of a labor contract between the parties, which is actually the root of all of these proceedings, this is not a case about a labor contract. This is a case about protecting individual and corporate citizens' rights in the Commonwealth of Virginia and about seeing that peace can be effected in these communities over which this Court has jurisdiction. At any rate, both parties have interests in the Orders that were handed down by this Court and also in the fines that have been assessed. The Court recognizes that. In addition, there are some other ancillary parties and those are the designated [31] recipients of these fines. The Commonwealth of Virginia has been designated as a recipient, as has the Counties of Russell and Dickenson here in Virginia, in addition to the Plaintiffs.

Now, I want to say that the Court acknowledges and has made a part of the record the two responses that were filed or sent to the Court by the Chairmen of the respective County Governments, the Board of Supervisors. And Mr. Stropp, I believe, correctly characterized the in-put of their letters. The Court has received no notification or no response of any type from the Commonwealth of Virginia. The Court is unaware of any actual notice that has been given to the Commonwealth of Virginia in this case. But at least arguably, the interests of this class of parties is solely dependent upon the Court's discretion in allocating civil penalties, much as the Commonwealth or a County or Town or some other political sub-division would be interested in criminal fines, their own portion made payable to various jurisdictions. The third class of parties is what the Court [32] will consider the public party. This Court is convinced that the public is an interested party, an ancillary party to this suit. And it bases that conclusion upon the fact that this Court was asked as a Court of equity, not a Court of law, to intervene in certain conduct that was being directed toward the Plaintiffs, and to bring to bear against the Defendants the power of the Commonwealth of Virginia. That is done

through the contempt proceedings. And this Court, after hearing evidence, after being convinced that it was warranted and needed, issued Orders, not only to protect the individuals, shall we say, the corporate rights and private rights of the Plaintiffs, but also to protect the public interest in their use of the highways, in their use of the public areas around the various facilities that were involved in this picketing action and other action by the strikers. And the Court has, as representative of the public, therefore has an interest, and some people would argue is a party to these types of proceedings. The primary purpose, not the sole purpose, but the [33] primary purpose of these fines was to compel compliance by the Defendants of the Court's Orders, in order to preserve the rights of the Pittston Group composed of the companies that are the Plaintiffs. However, every time there is a willful violation of the Court's Order, it is an affront to the authority and the dignity of the power, if you will, of this Court and to the people in this community. It is an eating away or tearing down of this Court's power to administer the law. And this Court is convinced, from the law it has read, that this Court, all Courts are vested with the power and charged with the duty of enforcing the Decrees, regardless of the purpose that the Decrees are put down for. Because those Decrees are mandates of law and the Court must have the power to enforce those mandates if organized society is to be maintained.

Now, when an entity is ordered to cease an activity that is violating a party's rights, under the pain of imposition of respective fines or respective penalties, and then the entity goes out and engages in the [34] prohibited conduct and fines are imposed, then the collection of those fines becomes the Court's solemn duty in this Court's opinion. But not only to ensure the rights of the private parties, but also ensure the rule of law. And although it is certainly relevant to the Court's consideration that the parties in this civil suit have come to an agreement with regard to their interests and have asked

the Court to vacate or suspend, what have you, all of the penalties that have been assessed, their agreement is not controlling on this Court. As Mr. Kindig has noted in his closing remarks, it is within the sound discretion of this Court as to whether these fines, as to what will happen to these fines.

The other legal consideration I think that the Court has had before it and must take into consideration is what power and jurisdiction this Court has over those Orders that were entered more than 21 days ago. As I am sure you all are aware, Counsel are aware, there are 21 days in Virginia, a 21 day waiting period, if you will, during which a matter is held within the breast of the Court. [35] After that 21st day it has been held that the Court loses jurisdiction to act as to its judgment. There are arguments, which the Court recognizes, that when it comes to equitable powers and the enforcement of Orders, that the Court can reinstate the Orders to the docket for the purpose of enforcement. I think it is a mixed question at this time whether this Court does or does not have power to effect the first several Orders which I understand have been on appeal now to the Court of Appeals of Virginia. The factual considerations that this Court has had in its mind are myriad. We have had some 25 days of testimony. I haven't gone back to count the number of witnesses that we have heard, but I would dare say that the average day brought 25 to 30 witnesses, sometimes more, sometimes less. That would not count the numbers of days that we have had pre-trials, pre-hearing conferences, and post-hearing conferences. So there are facts for this Court to consider. Among them the massive violations before this Court. As I said before there was 760 some alleged, 400 [36] proved. Of those 400, by the Court's reckoning, two-thirds, 263 involved violations of violence against persons or property, 137 of those violations were non-violent. The Court has also considered the fact that there have been violations of criminal loss. There have been some

212 felony warnings issued that were strike related in these two Counties—I am sorry, in this jurisdiction. There have been 2,337 misdemeanor warrants that have been issued that were strike related. There have been 549 traffic citations. And very steadily, there have been 71 injuries to persons as the result of criminal activity in this area.

The Court has also considered some of the terms of one of the tentative agreements to which the parties have agreed, as seen in camera, by agreement of the parties, must be made public. The Court, without revealing the terms of the agreement which was proposed to the Court or given to the Court in hopes that it would satisfy some of the concern that the Court has about these entities being responsible for their acts, the Court is [37] convinced that although those agreements or that particular agreement may very well satisfy the economic needs of the parties, it does not speak to the interest of this Court. The Court has also considered the willfulness of the acts that have been proved by the Plaintiffs in these cases. There has been an organized, coordinated effort by the UMWA International and District 28 to put into effect mass violations of law and acts of violence. Not only by the individual members, but there has been proof positive beyond a shadow of a doubt that the International leaders have been involved personally with these acts of violence. There has been evidence brought to the Court in these proceedings that the International leaders flaunt the Court's authority to its membership. The Court has also considered the acts that have been offered here and performed here by the Defendants in an attempt to purge themselves of contempt. There has been a statement that was offered here by Mr. Stropp. I would note that there was no—the Court could not discern in that statement any [38] admission of guilt. There was no statement of remorse for the fact that there had been violations of the Court's Orders. Although there was an assertion that the conduct would not recur, I would note for the record that Mr. Hudson, at least Mr. Hudson, who gave a

very similar statement to Judge Glen Williams in Federal Court, has been proven by the evidence in this Court to have violated his promises to Judge Williams, subsequent to being released from prison. And if that is what the Court is to expect from International representatives, then that bodes poorly for this type of an act. And I will put this in parentheses, or in quotations, "an act of contrition."

The Court has considered the voluntarily settlement that the Defendants have entered into with the NLRB. I think that the fact that they did voluntarily agree to an enlargement of the Fourth Circuit Court of Appeal's injunctive Order to encompass Virginia is a step in the right direction. But that does not address this Court's concern. The Union and its membership is [39] already under a very similar Order entered by this Court. As a matter of fact, although the Federal Order may be more detailed and specific about what is prohibited, it has penalties that are far, far less harsh or less severe than this Court's Orders required. For instance, there is a prospective fine that is required on the finding of a violation of \$15,000.00 per occurrence for non-violent violations and up to \$25,000.00 for occurrence for a violent violation. This Court has tried those sums in the previous Orders and found them to be totally ineffective. Thus the unprecedented, if it is that, amounts of these fines that have been assessed in order to get a compliance of this Court's Orders.

The offer to perform community service is an admirable idea. It is noteworthy in that it at least attempts to try to do something for the community which has been so rocked with this—no pun intended—by these activities. But, look at the offer. It is of such a minuscule amount that it is almost an affront to this Court. This Court has put down fines totaling approximately 64.1 Million [40] Dollars. If you allow credit for \$15.00 per hour, which is I think what most or the approximation of what the Union scale would be, at least in the past, for a miner, that's \$150,000.00. That's about two-one-thousandths of

the total fines that have been put down by this Court. It's a little bit more than five hours of community service work per Pittston employee who was out on strike here in Virginia. The contemptuous acts by the Defendants has cost the State of Virginia Millions of Dollars. It's cost these two communities Millions of Dollars. And more importantly, it has cost the individuals in this community something that is far, far more important, far, far more valuable than those Millions of Dollars, and that is the right to live in peace, without fear under the rule of law.

The Court has also taken into consideration that no attempt, no offer to pay any of these fines have been made. There's not even been a claim that the Defendants are unable to pay these fines. And I don't think that with the evidence this Court has heard [41] that that claim could have been made in good faith in any event. And more than that, there's been no showing that the Defendants have done anything to try to educate their membership or try to enforce or obtain compliance with the Court's previous Orders up to today's date.

Now, the effect of this Court's ruling—I am sure that I am not bright enough to delineate or even think of all of the effects. But some that have been weighing on the Court's mind that if the Court agrees to disband or to vacate these fines, hopefully these parties would be able to consummate what the Court is sure is a very, very complex agreement to a very complex set of situations. Honest, hard working persons could go back to their old jobs, earn a living, which is I am sure what they want to do. The local Governments and State Government can stop the diversion of monies and efforts and manpower from needed, other areas of need to control the activities in this strike. The local Governments can start collecting their tax revenues which is sorely needed for the [42] provision of the basic services in this very rural, very poor County. The company could hopefully go back to making a profit, which is what it's in business for, what it's organized for. And hopefully the raw wounds which have been inflicted on this community would start to heal and

we could expect, we hope, a return to normalcy. Those are items that would happen fairly quickly, the Court would assume. In the long term, this Court feels that the effect of the ruling would also be to convince people that by the use of similar Court proceedings by aggrieved Plaintiff companies are valid negotiating tools. That mass violations of the law are a valid means by which to conduct strikes and to get favorable contracts for companies. That violence is a an authorized and valid means of conducting a strike and effecting an economic term in a contract. It would also tell other people that this Court's Orders and all Courts' Orders do not have to be obeyed. That the law doesn't govern Southwest Virginia, but only the terms that are negotiated by private parties to these type of proceedings. It [43] would also tell men and women in organizations that they are not responsible for their acts.

The Court has attempted to weigh these various considerations in deciding what to do in this case. There is an old adage in the law that he who seeks equity must do equity. And although that maxim did not arise in cases like this, I think it's applicable. So I look to see what, in the long run or when you get to the bottom line, what have the Defendants done to deserve leniency by the Court. Considering the fact that the Court must be sure that both parties, all parties must know and understand that Courts are not pieces on a game board to be manipulated and used by the players as they will. The Court, the Orders of the Court are not bargaining chips; that the power of the legal system, here in Virginia at least, is not for sale and that the Courts of the Commonwealth will not be prostituted to dispute between two economic giants. This Court does not, cannot bargain. The Court will not be pressured to accept the arguments of the terms and conditions merely to see the settlement of the contract. The [44] simple fact is the Court's decisions are not subject to negotiations, and until this Court sees clear evidence of contrition and of good faith efforts to purge this

contempt, then and only then will the Court consider to do away with the penalties that have been assessed. The Court does not consider what has been offered to come close to a purging of the contempt.

The Court will hold this matter open for ten days, during which the Defendants are invited to present evidence that they have made a good faith effort to purge their contempt and show what the Court would consider sincere contrition. If the Court has no evidence within ten days, then a final Order will be entered, without further argument.

Now, housekeeping here—there have been several requests by Special Commissioners in Chancery which have been appointed by the Court for approval of their fees and expense. The Court has reviewed those and the Court will approve all of those fees and expenses which have been incurred to date, and orders [45] that the Plaintiffs in this case pay all of those fees and expenses. In view of the fact that the Special Commissioners are now in a position where they must come in and ask this Court to dismiss fines, the Court feels that the interests of the public and the Court are no longer the same as those of the parties Plaintiff in all regards, and order at this time that Mssrs. Hodges and Massie be relieved of their duties as Special Commissioners, with thanks for a job well done. But I think under the rules of ethics and the way these cases have come before us, it would not be fair to ask you now to take a position that would be contrary to your clients, to the requirements they desire, so the Order will be effective immediately that Mr. Massie and Mr. Hodges are relieved of their duties. And the Court will appoint new Special Commissioners. Are there any questions about the Court's ruling?

MR. HODGES: No, Your Honor.

MR. STROPP: No, Your Honor.

THE COURT: Very well, Court is adjourned.

* * * *

VIRGINIA:

CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

v.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,

Defendants

Lebanon, Virginia

May 16, 1989

BEFORE:

HONORABLE DONALD A. McGLOTHLIN, JR., JUDGE

APPEARANCES:

STEPHEN M. HODGES, Esq., Abingdon, Virginia

WADE W. MASSIE, Esq., Abingdon, Virginia

KARL KINDIG, Esq., Lebanon, Virginia

Counsel for Plaintiffs

WILLIAM O. SHULTS, Esq., Washington, D.C.

JAMES J. VERGARA, JR., Esq., Hopewell, Virginia

Counsel for Defendants

* * * - *

HUDSON—DIRECT

[25] Q Do Mr. Trumpka and Mr. Roberts give you directions from time to time on how to conduct the strike?

A Yes, they tell me how to conduct it, ask what is going on. I say this is going on. They say well—just reiterate they don't want violence.

Q Have you reported to them what has been going on during this strike frequently?

A Yes, pretty much on a steady basis.

Q Have they ever told you or instructed you to do something different from what you have actually done down here?

A Yes.

Q What have they instructed you to do differently [26] A Well, we had people arrested throwing rocks. They basically told me that is not to happen no more. That better not be happening.

Q And you went to work to be sure that didn't happen any more, is that right?

A I try my best.

Q Is that the only thing they told you not to let happen any more?

A They told me other things. I would have to sit here and try to recall. I don't know right offhand.

Q I am asking you if they have told you to get anything stopped other than rock throwing, as you recall.

A They just reiterated that they didn't want violence. They didn't want confrontation, you know, that they didn't want those kind of problems.

Q How about jackrocks, did they say anything about jackrocks, or putting nails in the road?

A That is all part of the violence.

Q So you agree that putting jackrocks, nails in the road is violence, is that right?

A Yes, since I have gotten five flats myself at the Holiday Inn, I agree it is pretty violent.

* * * * *

[28] Q How about Vernon Potter, does he work for the International?

A Yes.

Q Did you forget him?

A Sorry, I forgot Lee Potter.

Q He is an employee of the International Union, I believe?

A Yes.

* * * *

[30] Q Is there any part that you haven't complied with?

A What specifically are you talking about?

Q Is there any part that you know of that you haven't complied with?

A There is the limit probably to the number of people that was allowed there.

Q Now you know that the injunction provides that pickets are limited at 17 separate sites and the number of particular pickets are limited between fifteen and four at the various sites, is that correct, Mr. Hudson?

A That sounds—yes, without recalling the exact number, I think so.

[31] Q Since April 24 and May 10, has that provision of the injunction been complied with?

A You mean where at?

Q Limit to number of pickets, has it been complied with?

A I would say yes and no.

Q Has it been complied with at the Moss No. 3 preparation plant?

A Yes and no.

Q When was it not complied with?

A I don't know the dates, I guess that there were more people there. You have to understand there are 1300 people here that have got to go somewhere. They don't just sit at home. They don't have jobs.

Q I take it you told them not to come out there, is that what you are telling the Court, Mr. Hudson?

A No, I never told them not to come out there. I don't control people's lives. I try my best to coordinate their activities.

Q Mr. Hudson, you coordinated the appearance of hundreds of picketers at the Moss No. 3 preparation plant every day from May 24 right up to the present, did you not?

A I have tried to maintain that there wouldn't be violence on the picket lines.

[32] Q Mr. Hudson, I am asking you if you coordinated the appearance of hundreds of pickets at the Moss 3 preparation plant on every day between April 24 and May 10?

A Well, what do you mean when you say coordinate? Tell me.

Q What do you mean? You are the one who used the term.

A Well, coordinate, just tries to coordinate the people's activities and what they are doing.

Q Do you have a strike schedule that tells people what people to be where on what days?

A No.

Q You don't have any such thing as that?

A I don't have a schedule that says—

Q How do the picketers know where to go on any given day?

A Well, they, you know, they get phone calls. They have local union meetings. They decide like where they are going to be.

Q They decide where they are going to be, is that right?

A They decide with proper, I guess, you know, advice on where they should be.

Q Who gives them the advice?

[33] A Well, it originates from myself.

Q So you are really in charge of how many people and what people are going to go on a given day, aren't you, Mr. Hudson?

A I guess I am to some extent. To the extent that you can tell people what to do, who is fighting for a job, which is not, is not every day, that is for sure.

Q You tell them what to do. You tell them to come to the picket lines at Moss No. 3 and they come, by and large, is that not correct?

A They all don't come. I guess a lot of them do.

Q Have you ever told more than 20 pickets on a given day to go out to the Moss No. 3 preparation plant between April 24 and May 10?

A I probably have, yes.

Q You have told hundreds on every one of those days to be there, have you not, Mr. Hudson?

A I probably have.

Q On many of those days you have coordinated and instructed them what to do with the bullhorn, have you not?

A I don't know what you mean.

Q Do you have a bullhorn, Mr. Hudson?

A We have six or eight of them, they are there for crowd control.

[34] Q Do you announce and tell people what to do over the bullhorn?

A From time to time, I announce updates, you know, what the activities are. When you have got 1300 people you have to utilize the people. They can't be standing around idly like looking for something for them to get into.

Q How have you utilized these people at the Moss No. 3 preparation plant between the dates I have mentioned?

A We have had, you know, arrests, mass arrests of people exercising I guess their beliefs and standing up for, try to bring attention to what Pittston has done to their fathers and mothers and what Pittston is doing to them, taking their jobs and giving them to people out of the state. That is what they are trying to demonstrate.

Q Have you instructed the people to sit down on various days at the Moss No. 3 preparation plant and obstruct the trucks from going in and out of the plant?

A I have never gave anyone an order and say, "You have to do this." Have I suggested to do that, yes.

Q You have participated in those activities yourself, have you not?

A Yes, I have.

Q Some of those activities occurred between the 24th of April and the 10th of May?

[35] A Yes, I have.

Q Some of those activities occurred between the 24th of April and the 10th of May?

A Yes.

Q You were arrested yourself, were you not?

A Yes, I was.

Q You were sitting down, were you not?

A Yes, I was.

Q What day was that that you were arrested on?

A I don't even recall. They all run together.

Q Jackie was arrested also for sitting down out there, was he not, Jackie Stump?

A Yes, he was.

Q Have you instructed some of the wives or family members of the union members to come out and engage in the sitdown activities?

A Have I instructed them?

Q Yes, have you asked them to come out?

A Yes, I have asked them to come. It is their livelihood also. It is their fight that they should be there with their husbands.

Q I just asked you if you asked them to come out there, Mr. Hudson. You can just answer that question, if you will.

[36] A There is a reason for asking them to come out.

Q Did you ask them, and I believe your answer is yes.

A Yes, it was.

Q Did you invite them to sit down in the roadway on some days and block the trucks?

A Yes. I mean I invited them, means I suggested it, yes.

* * * *

STUMP—DIRECT

[55] Q What I am asking is, directing people to be at Moss No. 3 as opposed to McClure on a certain day.

A Mr. Hudson and I work hand in hand. He works for the International and I work for the District. So I get to voice my opinion on anything. He has the final say. Sure, we work hand in hand.

* * * *

[56] Q What did you do to communicate that to members of your organization?

A We got copies of it out, posted at the picket shacks, informed the people.

Q At all picket sites?

A To the best of my knowledge all picket sites.

Q What did you do to enforce violations of that injunction?

A Well, as far as violations with the rock throwing, alleged rock throwing, jackrocks, we instructed our people that was not the type of strike that we intended to run. We set out in this goal back in '87 to run a non-violent strike, to run one different than the mine workers had ever run before, and that is what we preached to the people since then.

Q Since '87?

A Yes, sir.

Q What have you done to stop the blocking or the mass picketing?

A I can't say that we have done anything to stop that.

Q I believe your office was served with a copy of the amended injunction on April 22. Didn't you read it?

A Yes, sir.

[57] Q Did you disseminate it?

A Yes, sir.

Q How did you do that?

A The same way we do the others, to the picket shack.

Q What have you done to stop mass picketing or blocking under that injunction?

A There is still, has been mass picketing?

A What have you done to stop it?

A Nothing at this point.

Q Have you ever received any instructions from the union leadership to stop mass picketing or blocking? I am talking about the International.

A Personally myself I haven't had any conversation with them.

Q Have you received any injunctions from them that you should stop that?

A Personally myself, I have not.

Q Do you know of anyone else in your District organization that has received such instruction?

A I can't speak for any of the people. I don't know of any myself.

Q One of the provisions of the amended injunction was that any violations of it should be reported to the Court. [58] Has anyone done that?

A Excuse me?

Q One of the provisions of the amended injunction was that any violations of it, that you know of should be reported to the Court. Have you or anyone on your behalf done that?

A We have kept reports of the activities, I think, as requested. But as far as to say personally have I contacted the Court, no, sir, I haven't personally contacted the Court.

Q To your knowledge has any such list of violation been provided to the Court?

A At this point I don't know for sure.

Q But you have a list of all violations, is that what you are saying?

A We instructed our people as the Court has instructed to keep down the things that went on and our people have been instructed to do so.

Q I am sorry, what did you say?

A I say our people have been instructed to keep down the violations and things, I think, as the order reads to each and every picket line to keep up with—

Q Keep them written down you mean?

A Yes, keep a log, yes.

* * * *

KVASNICKA—DIRECT

[108] A At that point there was not much we could do. We only had a few troopers and no transportation, so we just waited.

Q Did you make any request of the picketers to move?

A At that point, no.

Q Did you later?

A No, that day we had insufficient people to move anybody, so we didn't make, you know, any orders that we couldn't back up.

Q How did the situation end that day?

A Later in the day, approximately 4:00 o'clock, they began to break up and eventually they all left.

Q Was there any traffic in or out that day?

A None.

Q To Moss No. 3 plant?

A None that I am aware of.

Q Were any leaders there that day to your knowledge of the strike from the union's standpoint?

A Yes, sir.

Q Do you know any of them by name?

A Yes, sir.

Q Who was there?

A Marty Hudson, Jackie Stump, John Cox, C. A. Phillips.

[109] Q What was the situation the next day on the twenty fifth?

A The twenty-fifth I arrived about the same time and there were virtually no large numbers, just a few pickets at each location. It was like that until about 10:00 or 10:30, they started gathering back at the Moss No. 3 prep plant and I think it was around 11:30 they attempted to bring a loader out of the preparation plant and at that time they blocked the road.

Q One of the company people attempted to bring a loader out?

A Yes.

Q How many picketers were involved that day?

A Over 500.

Q What did you do in response to the situation?

A On that day we had sufficient man power where we ordered them to clear the roadway and told them if they did not they would be arrested and they did not and we arrested approximately 450.

Q Was Mr. Stump one of the ones arrested?

A Yes, sir.

Q Jackie Stump?

A Yes.

Q Did you arrest him yourself?

[110] A Yes, sir.

Q Did you ask them to move before you arrested them?

A Yes, we made an announcement over the public address system that they were in violation of state law and if they did not move and clear the highway that they would be arrested.

Q Was Mr. Hudson there that day?

A Yes, sir.

Q Did you have any discussion with him about moving the people?

A When we—not when we made the announcement.

Q Later that day?

A Yes, sir, I did talk to Mr. Hudson later that day.

Q What discussion did you have with him?

A It was a point where we had arrested, like I said, about 450 people. We talked about the fact that they, every time we would arrest a group, they would send another group in. We talked about, I think the exact words was it could go on all night like that. They could keep sending them in and we could keep arresting them.

* * * *

[117] Q During the period of time between the eighth and the thirtieth, when you were at the picket site, did you have occasion to get to know Mr. Hudson and Mr. Stump?

A Yes, sir.

Q See them on a fairly regular basis?

A Just about daily.

Q Did you have occasion to have conversation with them?

A Yes.

Q Have you had occasion to observe them dealing [118] with the other pickets that were there at the site?

A Yes, sir.

Q Did you ever hear Mr. Hudson or Mr. Stump engaged in conversation with the pickets concerning whether the conduct of the picket line should be peaceful or violent?

A Peaceful.

Q Peaceful. When did you hear them say that?

A Each time we made arrests, especially when there were large numbers of arrests for blocking the roadway, they constantly urged them not to resist, to be a peaceful demonstration.

Q You say constantly? Would it be more than one time on any given day?

A Yes, during the entire arrest process.

Q Did you ever have any occasion while the arrests were taking place where something would happen that you would feel there is some tension escalating in the air?

A Yes, sir.

Q Did you ever have any of the union leaders intervene to calm people down?

A Yes, sir, we had an incident where some women were being arrested. One of them resisted and got them pretty riled up and came and asked could I give them a few minutes to calm their people down.

[119] Q You say they got riled up. Who got riled up?

A The other pickets, the men on the picket line.

Q Did they in fact calm the people down?

A Yes, sir.

Q How do you describe the demeanor or conduct of the people who were actually arrested?

A For the most part very passive. They either just were very limp or had to be carried to the buses or they got up and walked to the buses. We had very few instances that there was any resistance at all.

Q Did it appear at Mr. Hudson's and Stump's request that everything remain peaceful was working?

A Yes, sir.

Q During the time you were there, was either Mr. Hudson or Mr. Stump arrested?

A Mr. Stump was.

Q Did you have any difficulty arresting him?

A No, sir.

Q I believe you said it was April 26 that you found a number of vehicles parked along the road.

A Yes.

Q Did I understand you to say that you talked to either Mr. Stump or Mr. Hudson about that?

A Both.

[120] Q They did arrange to have people move the vehicles?

A Yes.

Q I believe you said on April 28 there were quite a few people who would come to the picket site and then leave and then a little bit later another group would arrive?

A Yes.

Q Did those people attempt to stop traffic?

A No.

Q Do you know how long they remained there before they would leave?

A It varied. The first group came in that morning, probably stayed a half hour and then disbursed. It is difficult to say how many each time, but you know, varying groups would come in and out of the area. Stay for a while. A few minutes to close to an hour and then leave.

Q You were present during that course of events?

A Yes, sir, all day.

Q Did those different groups that came in cause any problem?

A No, not any.

Q You indicated that there had been jackrocks and nails found along the road almost every day.

A Yes, sir.

Q Did you determine the source of those jackrocks [121] from that?

A No, sir.

* * * *

[122] Q Did you ever see Mr. Hudson or Mr. Stump try to restrict the number of people at Moss No. 3?

A No, sir.

Q Or restrict the blocking of the road?

A No, sir.

* * * *

INGERMAN—DIRECT

[125] Q Can you describe what the situation was with respect to objects in the road, jackrocks, things of that nature?

A Jackrocks in the road, that was a constant hazard that we had to deal with. Had troopers on patrol to pick them up. Used a magnet truck trying to pick up the majority of them.

* * * *

INGERMAN—CROSS

[131] Q You have indicated you have seen some vehicles that had windshields broken.

A Yes.

Q You don't have any personal knowledge as to how or when they were broken?

A The only incident I can recall with any detail would be the incident where the truck was damaged up on Route 600 on Olive Branch.

Q That wasn't actually the picket site?

A No, sir, it was not.

Q You don't have any personal knowledge as to who may have thrown rocks or jackrocks?

A No, sir.

Q Did you see Mr. Stump and Mr. Hudson almost every day that you were on the picket sites?

[132] A There may have been a day or two I didn't see them, but pretty much I saw them every day.

Q When you did see them did you talk with them?

A Yes.

Q I believe you said you developed a pretty good line of communication with them.

A Yes, we tried to maintain a good line of communication.

Q Were they for the most part cooperative in working with you?

A Yes, sir.

* * * *

[134] Q Mr. Stump did cooperate with you in talking with the crowd?

A Yes, sir.

Q You never identified where the rocks had come from?

A They came from a cliff above the troopers. It was known several pickets were in that area.

* * * *

STRONG—DIRECT

[158] A About 7:15 a.m. the 50 to 60 people at the gate moved from the gate down the road and blocked the traffic coming into the mine.

Q How did they block it, Mr. Strong?

[159] A They sat down in the road.

Q Did you observe that?

A Yes?

Q Did you have any event with respect to your personal vehicle on that day?

A Yes, at approximately 2:00 p.m. that day I followed a delivery truck out of the mine gate and approximately 1500 feet from the mine gate I passed a group of approximately 15 pickets and immediately when I passed them I received an impact to my vehicle and proceeded on down about another thousand feet to where some state police were stationed and stopped the vehicle and observed a large dent in the right rear quarter panel.

* * * *

STRONG—CROSS

[163] Q Mr. Strong, the photograph that was introduced I believe it is as Exhibit 22, that has a picture of you by a vehicle with a dent in the fender?

A That is correct.

[164] Q It would be correct that you have no knowledge as to who or what caused that dent?

A I did not see a specific individual throwing anything at that vehicle, that is correct.

* * * *

[166] Q . . . When you got the dent, were you within throwing distance of some picketers?

A Yes, I was within three to four foot of a group of approximately 20 pickets.

Q Have you ever had any dents in your car going to or from work other than during a strike in all these years you have been working, in the body of your car?

A No.

* * * *

CHURCH—CROSS

[175] Q Other than either standing or sitting, did you observe any other behavior by these people?

A Behavior?

Q Is that all they did, either would be standing or sitting?

A As the time went on, there was chanting and singing and things like that.

Q Essentially a peaceful group?

A Peaceful, violating the law, I don't know if that is peaceful. It is a breach of peace, I believe, that they were blocking the road, so I can't say that they were peaceful, but they weren't violent.

Q Their methods of blocking the road were peaceful were they not?

A Yes.

Q Were you present when the people were arrested?

A Yes.

[176] Q Was there any problem in the course of the arrest?

A We didn't have any difficulty. All the people that we were going to load, especially in the first three lines, of people seated on the road, we had to physically take them and place them on the bus.

Q Take them, you mean you had to lift them up?

A Yes, had to lift them up and after the first three rows they pretty much got up on their own.

Q I believe you mentioned that you had seen some vehicles that were damaged on the twenty-fifth.

A Yes.

Q Were you able to identify the course of any of that damage?

A I don't know. We didn't know who did it.

* * * *

[178] A On May 4 I and my shift of troopers arrived at McClure No. 1. There were numerous pickets there that arrived there between 6:00 and 7:00. And they all

went up Route 773 which goes into the main gate there at McClure No. 1 from the intersection of 63. And they congregated around the gate there, maybe 100, 125 to 150 people. They congregated across the road, blocking the road. A short while later, maybe 10 or 15 minutes, they all continued back down the road about half or three-quarters of a mile. They all congregated there in the road again. All of a sudden there was kind of a dispersement and 20 of these people sat down in the highway.

* * * *

DUFFEY—CROSS

[181] Q Have you had occasion to talk with either Mr. Hudson or Mr. Stump from the union?

A I have talked to Mr. Stump.

Q Have you discussed with him whether the conduct was designed to be peaceful or violent?

A On May 4, I congratulated Mr. Stump for his peaceful demonstration there and the way the people acted.

* * * *

[184] Q Was an effort made to clear the road of these materials every day?

A Yes, sir.

Q Every day do the jackrocks reappear?

A Yes, sir.

Q When activity is afoot there at the picket line is there any way you can tell when something is going to happen?

A Well, basically when you see a lot of the higher ups, which I mean Mr. Stump or some of these other people higher in the union, start coming into a particular area, you can expect something.

* * * *

DUFFEY—REDIRECT

[185] Q Sergeant Duffey, the jackrocks that you have mentioned, do you have any firsthand knowledge as to who placed them on the road surface?

A Well, I have heard both sides, firsthand knowledge. Last week I just about caught a gentleman. I was up on the mountainside watching through binoculars but I think he got wind of me and took off.

Q You have no firsthand knowledge?

A No, sir.

Q Would it be safe to say that these devices that you have described in the road do not discriminate between union tires and company tires?

A No, sir.

* * * *

TOMPKINS—DIRECT

[187] Q Trooper, have you been sworn earlier?

A Yes, sir, I have.

Q Would you state your name, please.

A Randy Lee Tompkins.

Q Your occupation?

A Virginia State Trooper.

Q Have you been assigned to the Southwest Virginia area in connection with the strike?

A Yes, sir, I have.

Q What period of time have you been here?

A I came April 29 up to this date. I have been here the entire time.

[188] Q What areas have you been working?

A I have been stationed in the area of McClure No. 1.

Q Were you there on May 9?

A Yes, I was.

Q Did you make any arrests that day?

A Yes, sir, I did.

Q Would you tell the Court what arrests you made.

A I made an arrest on Vernon Lee Potter.

Q How did that come about?

A I observed Mr. Potter first drop a jackrock as the truck was passing and then he attempted to kick it underneath the tire of a passing vehicle.

Q What happened after that?

A After that I went toward him. He quickly went towards the guardrail and almost in a running motion.

When he got to the guardrail, he was throwing more jack-rocks over the side of the guardrail.

Q Did you see how many he threw out?

A I seen so many flying, he got some of them quite a distance. Some of the other troopers picked them up. There were six picked up immediately at the guardrail.

* * * *

IRVIN—DIRECT

[212] Q On the 26th of April of this year were you in a coal truck convoy going from Lambert Fork over to the Moss No. 3 preparation plant?

A Yes.

Q Did you have any damage to your truck on that trip?

[213] A Yes, I did.

Q Did you get rocked?

A Yes.

Q Did you see who rocked you?

A I just saw the crowd.

Q What did the crowd look like?

A They were dressed in camouflage, about 10 or 15.

Q Was this on Route 63?

A Yes, I believe it was.

Q Was your truck damaged?

A Yes.

Q Let me show you Exhibit No. 27 and ask you if that is the picture of you and part of your truck?

A Yes, it is.

Q Does that show the damage that occurred to your truck on that day?

A Yes, sir.

MR. HODGES: We offer that as Exhibit No. 27.

THE COURT: Any objections, gentlemen?

MR. VERGARA: No objections to the admissibility, the only objection would be whether a foundation has been laid to link this photograph in any way to the defendants. It seems to me we are here today as to evidence

by the defendants. It seems to me most of the [214] photographs that have been introduced certainly are not objectionable, as far as photographs, but whether they proffer any conduct or activity by the defendants, on that basis we would object as to the relevancy to the defendants.

THE COURT: All right.

MR. HODGES: Certainly not conclusive of anything your Honor, but it has been shown here that the uniform of the picketers was camouflage clothing and other photographs have been exhibited here and received without objection on the same trip to other trucks, that were thrown by camouflaged people along the roadway I think the Court necessarily would have to take reasonable inferences from some of this testimony.

THE COURT: This is circumstantial evidence as to the identity of the rest of the damage that was done by people who were supposed to be in camouflage. Of course, according to the theory of the plaintiffs, that could be taken to mean they were picketers. Of course, that isn't conclusive and the Court will accept this evidence and overrule the objection, subject to it being tied some way to the defendants.

MR. VERGARA: That was our point. We do not object to those photographs as far as representing [215] damage to the vehicle and, quite frankly, that was my, I guess perhaps even my error, but I assume the purpose of most of the photographs previously had been for the purpose of showing damage. I was concerned that the introduction suggested a direct link. Having heard the Court indicate circumstantial, I don't have the same reservation.

THE COURT: I am just speaking as for this one photograph, Mr. Vergara. I am not making any comment with regard to the others.

MR. VARGARA: Yes, we can make comments in regard to the others in argument.

* * * *

[217] Q Did you encounter a rocking incident on that trip?

A Yes, sir, sure did.

Q Was your truck hit with rocks?

A Yes, sir.

Q Were there any picketers along the road at the time the rocks came at you?

A Yes, sir, there sure was.

Q How were they dressed?

A Dressed in camouflage.

Q About how many picketers were there along the road, do you have any idea?

A Probably 75 to a hundred.

* * * *

SHOUBE—CROSS

[219] Q You have no personal knowledge as to the source of whatever it was broke your windshield?

A No, sir.

* * * *

MEADE—DIRECT

[221] Q Now in that instance I take, you got your truck, had a dent or scrape in the door the first incident?

A Yes, it had a nick in the hood.

Q And then the next day did you have another incident?

A Yes, sir, I did.

Q Where did that occur?

A At the picket shack, at the intersection of 615 and 616, Carbo.

Q Is that what they call the Carbo intersection?

A Yes.

Q Were there pickets present at that time?

A Yes.

Q How were they dressed?

A Everyone in camouflage.

Q Did some hit your truck?

A Yes.

* * * *

MEADE—CROSS

[223] Q Do you have any way of knowing if all the people you see along the road are members of the union?

A No, sir, I don't.

Q Do you have any personal knowledge as to who is responsible for the paint on your vehicle?

A I couldn't see who threw it.

* * * *

TAYLOR—CROSS

[239] Q Do you know what caused the damage that is shown in that picture?

A Not exactly. I didn't see it.

Q Do you know who caused the damage shown in the picture?

A The only thing, when I was going up through there my buddy riding, he hollered, "We have been hit."

* * * *

THOMAS—CROSS

[243] Q You indicated you felt there were three people around the shack.

A There were three standing with camouflage clothes on.

Q You were approaching the shack and these three people and before you got to the shack something strikes your windshield?

A Yes.

Q Since you testified there were three, I assume you saw those three people?

A I saw three standing on the side of the road.

Q Did you see anyone throw anything at your windshield?

[244] A No, I didn't.

Q You did not see those people make any movement toward your vehicle?

A No.

* * * *

SWINDALL—REDIRECT

[251] Q Mr. Swindall, were you able to identify anyone throwing anything at your vehicle?

A No individual person, no, sir.

Q How long have you been in Warehouse 6?

A Warehouse 6 since 1959.

Q Do you know a lot of people that you see on the picket areas?

A Yes, I do.

Q Is that because you have worked with them over the years?

A Yes.

[252] Q Do you know others—

THE COURT: I can't hear.

BY MR. VERGARA:

Q Do you know others that you have seen within the community?

A Yes, I do.

Q On these days in question there is no one you can identify as someone—

A No, just a mass of green camouflage.

* * * *

AUKERMAN—DIRECT

[259] Q What happened over say the next 30 to 45 minutes?

A We sat there for a long time and there just got to be more and more of them. When they got to be 40 or 50 of them, they started ganging up around us.

Q What do you mean "ganging up around you?" Were they surrounding you and the other truck drivers?

A Yes.

Q Were they talking to you?

A Yes, causing us, telling us, "This is one run you are not going to make." They told us that they were going to burn us in our truck.

Q Did this persist over some period of time?

A Yes, it went on for probably about, between that and what happened, about two hours, I would say.

[260] Q How many picketers finally arrived at the maximum number by your estimate?

A I would say approximately about 150 or 200.

Q Did they finally offer you the opportunity to turn around and leave?

A They walked back to the man that was in the tractor and trailer, first tractor and trailer said, "If you all will turn around and leave, we will leave you alone." They said, "If you don't, we are going to burn you in your truck."

Q How did you fellows respond to that?

A He called on the CB, just in front of us, he said, "We better try to turn around and leave." We started to go back to our trucks. While I was walking back through there they followed me and one threwed a rock and hit me in the back of the head.

Q Did it cut you or wound you in some way?

A Yes, I got six stitches.

Q As I understand at that point you all had these threats of being burned and you decided to turn around and go back?

A Yes.

Q And you walked back towards your truck?

A Yes.

[261] Q Did you get in your truck?

A Yes.

Q What did you attempt to do?
A I attempted to turn around.
Q Did you get turned around?
A I got halfway and a white Camaro pulled up in front of me and blocked me.
Q A black Camaro?
A A white one.
Q A White Camaro. Then what happened?
A When he done that, they all started throwing rocks and jerked my field lid off my truck. I just couldn't see anything. They were throwing so many rocks at me.
Q Did they damage your truck?
A Yes, sir.

* * * *

[262] Q Did you then try to pull on out, even though your truck was being rocked?

A Yes.
Q Did you get a little ways up the road?

A Uh-huh.

Q What happened then?

A After I went probably, after I finally got turned around. I went probably 40 or 50 feet and then they left me alone. After I got through them, they left me alone. I turned around and seen dad coming through and they was rocking him.

Q That is your dad, Jesse Meadows?

A Yes.

Q You looked back and saw him, he was behind you?

A Yes.

Q What condition was he in?

A When I seen him, he was knocked out over the steering wheel.

Q Did you get your jaw injured in this incident you told us about?

A Yes.

[263] Q How did that happen?
A Whenever I was attempting to turn around, they busted all my windows out except for one vent glass, and I had my head—one threw it through the right side and it hit me.
Q Was he on the dashboard?
A You mean on the side of my truck?
A Yes.
Q Was he right at the window?
A They was jumping on the side of my truck and throwing.
Q He was right at your window and threw a rock and broke your jaw?
A Yes.
Q You have a broken jaw?
A Yes.

* * * *

FLACAVENTO—DIRECT

[280] Q Go ahead.

A Well, when I started going up there, quite honestly, I was skeptical of the UMW's commitment to the non-violence. I was very interested and glad that they had professed that publicly, but I was skeptical about it. I am not quite sure why, but I was. Then what I discovered over the period, I had been there about 10, 9 or 10 days over the last three weeks, as I discovered that there was a very deep commitment to it and very consistent—

MR. MASSIE: Excuse me. If the Court please, I object. This is a conclusion.

THE COURT: Sustained. You cannot testify, sir, as to what your conclusions are. You may testify—the question was were you talking to the individuals and had you heard what their plans were with regard to how the strike would be conducted. If you have heard what they said as to how they would conduct the strike, you may testify to that.

[281] THE WITNESS: May I testify in terms at the picket lines what I heard them say?

THE COURT: That was the question.

MR. MASSIE: We would have our same objection. I think it is hearsay, an out of court statement, self-serving. It is not being offered as an admission against the union but something being offered in favor of. We don't think it is admissible, Judge.

THE JUDGE: Your clients have attacked the union for having violated the terms and conditions of this injunction and have at least implicitly suggested that the union is behind a lot of violent acts. I think the testimony goes to rebut that and I will allow it.

BY MR. VERGARA:

Q Please continue.

A On a number of occasions I heard and saw John Cox, Marty Hudson, Jackie Stump, and then on some other occasions I believe Rick Blaylock, both prepared the miners for the arrest and repeatedly state in the preparations as men and women were sitting down that they were not to resist arrest, repeatedly say that, that it was to be a peaceful arrest process. On an occasion following the incident where some miners were hit by the pickup truck, I was at Moss 3 [282] then and was there when Marty Hudson returned—

MR. MASSIE: Excuse me. I don't believe there has been any testimony in the case as to the fact that he attempted to state just now and I move that it be stricken.

THE COURT: He was not there. He is not shown to have been there.

MR. VERGARA: I think Mr. Meadows testified about the truck and the trooper this morning testified as well.

THE COURT: There has been testimony I believe by Mr. Meadows concerning the pickup truck, driving into the miners.

BY MR. VERGARA:

Q Please continue.

A I was at Moss No. 3 subsequent to that and Marty Hudson returned and hopped up in a pickup truck and there was a great deal of attention and anger among the crowd that was gathered around and I heard him say, "We will not return violence for violence. We will keep this on our terms. We will do this non-violently."

I heard Jackie Stump and John Cox repeatedly urge the miners of another tense incident which I am not sure whether I can say happened or not. I was there. Perhaps I [283] allegedly saw it happen. Where a young woman got into a scuffle with the state troopers and in spite of a great deal of tension, I repeatedly heard Jackie Stump and John Cox in that case urge them to remain calm, to stay seated, to keep it non-violent. In every case that I have seen arrests, that is precisely what I have seen.

Q You mentioned an incident where a young lady was arrested, and I think you indicated that several gentlemen urged the people to be peaceful. Was there a sit-in taking place at that time?

A Yes, sir, there was.

Q Were there people seated in the road at that time?

A Yes, there were.

Q Did any of the people seated in the road attempt to get up while this lady was being arrested?

A My recollection is that a number of people stood up but when they stood up they were urged to stay in place, not to cross the road where the incident was taking place. The troopers, four or so troopers were in a scuffle with a young woman. They were urged to stay in place. In fact, I think they were urged to sit back down. I am not sure of that. I know they were urged to stay put.

Q You mentioned you have seen them prepare for [284] the arrest, is that correct?

A Yes.

Q Can you explain to us what you mean by prepare for the arrest?

A Well, what I have seen typically that as they sat down, they are told how the arrest will occur, something about the troopers coming across and taking them to the buses. They are urged not to resist, more than urged, they are told not to resist arrest. They are always, typically is a prayer that is offered by somebody, one of the ministers in the group, right before the trooper crossed the road before the arrest.

Q You indicated that initially when you began to visit the picket line you were skeptical as to the commitment to peace.

A To a non-violent strategy, yes.

Q Has your mind changed?

A Are you asking my opinion?

MR. HODGES: I object to his opinion.

THE COURT: Sustained.

BY MR. VERGARA:

Q You mentioned Mr. Hudson, after some people had reportedly been struck by a pickup truck, urging to calm the crowd and remain peaceful.

[285] A Yes.

Q Did anything else take place that afternoon after he talked to the crowd about remaining calm?

A During the time that I was at Moss No. 3, after the crowd had gathered around the truck and he had encouraged them to remain calm and not to return violence, I don't know exactly how much time, but I would say within an hour subsequent to that, there was another series of peaceful arrests that occurred right there at Moss 3. They did sit down again and people were again arrested without incident, if I recall.

* * * *

[288] Q Sir, have there been people from your church organization who have been arrested for sitting in the road?

A Do you mean from the Catholic church or from my organization?

Q I am sorry, from your organization.

A Yes.

Q Did anyone from the union order them to sit in the road?

A No.

MR. VERGARA: Thank you, sir.

RECROSS EXAMINATION

BY MR. MASSIE:

Q When were people from your organization arrested?

A Friday of last week, was myself.

[289] Q So that would be Friday what?

A I reckon it was the twelfth, the twelfth.

Q Outside I guess the scope of these rules. Were you the only one?

A From my—

Q From your organization?

A We have a relatively small staff, yes.

Q How many are in your organization?

A My staff is four people locally, myself included.

Q You were the one that got arrested?

A That is correct.

Q That is for blocking the road?

A That is correct.

Q Criminal offense?

A A misdemeanor, I understand.

Q Misdemeanor. Did the police tell you to move before you were arrested?

A An officer came up and said that if we did not move, we would be arrested.

Q And you stayed there anyway?

A That is right.

MR. MASSIE: That is all.

THE COURT: Any other questions?

REDIRECT EXAMINATION

[290] BY MR. SHULTS:

Q Mr. Flacavento, on the days that you witnessed the arrests were there people outside the union arrested in those mass arrests to your knowledge?

A Were there—

Q Were there people who were not union members arrested?

A Yes, on some days.

Q Do you know who those individuals were?

A Well, I know some of the individuals who were arrested on Friday, May 12, yes, who were not union people.

* * * *

LA FORCE—DIRECT

[306] Q Now did anyone from the union order you to sit in the road?

A No, I did it on my own because Pittston, they broke the law. They took my health card from me. I deserve it and that is the reason I done it. I am protesting in that.

Q Did anyone from the union force you to sit in the road?

A No. I did that on my own.

Q You are a widow. Do you receive any type of strike benefits?

A No.

* * * *

TATE—DIRECT

[314] Q Have you received any instructions at the picket line as to conduct or behavior on the picket line?

A I have been admonished on several occasions as [315] to no violence, no alcoholic beverages and no weapons.

Q You say admonished. You didn't have weapons on the picket line, did you?

A I have never seen any, and never seen any evidence of alcoholic beverages.

Q Were you told this on more than one occasion?

A Yes, sir.

Q Do you remember the people who were telling you these things?

A Most of it came down the line from my fellow picketers.

Q During the course of this strike have you been arrested?

A Yes, I have.

Q Do you remember the approximate week or date?

A I believe it was April 24. I am not absolutely certain but I believe that was the date.

Q What were you arrested for, sir?

A Blocking free passage of others, I believe the arresting warrant stated.

Q What were you doing?

A Sitting in the road at the entrance to the McClure No. 1 preparation plant.

Q Now when you sat in the road that day, you [316] realized there was a very real possibility you might be arrested?

A Yes, I did.

Q Were you aware of the injunction that had been entered by the court?

A Not at that time I wasn't.

Q Did you subsequently become aware of that?

A Yes, I did.

Q Did anyone from the union order you to sit in the road that day?

A No, sir.

Q Did anyone direct you to sit in the road?

A No.

Q Did anyone tell you you would lose your strike benefits if you didn't sit in the road?

A No, sir.

* * * *

SUTHERLAND—DIRECT

[348] Q Have you ever heard any union officials at the picket sites give any instructions as to behavior or peaceful [349] or violent behavior?

A Yes, they told us to go peaceful, not to use any vulgar language, to act like ladies and gentlemen.

Q Do you remember who told you this?

A Mr. Stump and Mr. Hudson.

Q Both Mr. Stump and Mr. Hudson?

A Uh-huh.

Q Was this on one occasion they told you?

A On several occasions.

Q Now the day that you were arrested for sitting in the road, did anyone from the union order you to sit in the road?

A No, sir.

Q Anyone from the union make you sit in the road?

A No, sir.

Q Did anyone from the union tell you that your husband would lose his strike benefits if you didn't sit in the road?

A No, sir.

* * * *

[1]

VIRGINIA:

CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

v.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,

Defendants

Lebanon, Virginia
July 19, 1989

* * * *

BARR—CROSS

[75] Q Fine. The leaders were cooperative with you, were they not?

A Very, yes, sir.

Q There were times when they averted trouble, did they not?

A Continuously, yes, sir.

Q And there were times when they assisted you and your fellow state troopers in averting trouble, is that right?

A Continuously, yes, sir.

Q You had frequent and positive contact with them is that true?

A I did, yes, sir.

Q Just a moment.

Would you give me an example, Trooper, of how the leaders helped you or other troopers avert trouble.

A If we had any problem with the picketers such as, and at times the crowds would begin to swell out into

the edge of the road as to where they placed themselves in position that they could have impeded traffic, if we had problems with any individual in the heckling of people from [76] our department or we had anybody becoming a little too rowdy in their verbal manner towards company representatives or employees, I would not or I did not have a member of my department to approach those individuals. I would contact one of the strike leaders, make him aware of the problem and he would take care of it. The problem would be eliminated at that point in time.

Q Were there times, can you give us an example of how they assisted troopers in averting trouble?

A In the same manner. That is what I am referring to. If a trooper had a problem with any of the miners doing anything out of the way, the trooper could approach me, I would go to one of the leaders and the problem would be eliminated.

* * * *

CONNOR—DIRECT

[180] Q From where to where?

A Laurel Mountain to Moss 3 prep plant.

Q How far is that?

A Approximately two and a half to three miles.

Q How long have you been doing that?

A Since October or November.

Q Of last year?

A Yes, sir.

Q Do you recall an event on June 12 during one of your trips?

A Yes, sir.

Q Tell the Court what happened on that day.

A There was a wreck approximately, I would say a mile and a half above Moss 3 prep plant, between a coal truck and a car. Traffic came to a standstill. Traffic was excessively heavy. There was approximately 30 men or

so dressed in camouflage, gathered around my truck. There was no way I could turn around to get out. I tried to holler on my CB and get me a trooper and they tore my cable axis that goes in the bottom of my CB antenna, they pulled them loose to where I couldn't holler for no trooper. They bent my mirrors in, cut the brake lines on my trailer, ripped the wiring out of the back of my trailer. Pretty much destroyed my trailer there. Cost me two or three hours downtime.

[181] Q Did you simply drive away from this or not?

A Well, I was able to drive away, but it had to be repaired as quick as I got to the mine. I drug my trailer pretty much, my brakes were about to lock up where the air lines were cut. I was able to get it to the mine, which you know was half a mile or so.

Q While this was going on, could you leave then, is what I am asking.

A No, sir.

Q Why not?

A Well, they was, like I said, 35 men or so just daring me to get out of my truck.

Q Could you maneuver the vehicle around the traffic?

A No, there was just too much traffic, cars in front of me and cars behind me, no way I could turn around.

Q What were these people saying to you?

A They were just cursing me, daring me to get out of the truck, said come on out there and we would fight.

Q About six days later did you suffer another event?

A I had a rather large rock thrown through the windshield of my truck.

Q Where did that happen?

[182] A Approximately a half a mile above Laurel Mountain.

Q Was that on your regular coal route?

A Yes, sir.

Q Describe to the Court what happened that time.

A I went up the road from the point where the incident took place for me to go up and load and come

back down that would take approximately 10 of 15 minutes. When I went up, there was no vehicles—when I come back down I would say there was approximately 15 to 20 men in a wide spot at the bottom of the hill. I had two cars running approximately about 10 miles an hour in front of me, and when I got to the bottom of the hill, I was rocked excessively hard, had a rather large rock stick in my windshield.

* * * *

KILGORE—DIRECT

[228] Q You don't send your bills to your individual criminal clients?

A That is correct.

Q Who do you send them to?

A There is a criminal or legal defense fund and it is called Pittston Miners for Justice or Pittston Against Miners, or something. I have only sent two bills.

Q What is their address?

A I sent it in care of Mr. Stroop and he forwards it on to the legal defense.

Q Mr. Stroop is the general counsel of the United [229] Mine Workers of America?

A Yes.

* * * *

JUSTICE—REDIRECT

[269] Q You say they were scattered out a half mile down the road?

A Yes.

Q How do you know the people you think threw the [270] rock? Do you have any reason to believe, based on what you know, that they came from the picket shack area?

A Well, as the rock bounced off my truck, there was three guys standing behind the vehicle. When I looked to see them, they ducked and hid.

Q Do you have any other basis for believing that those people, those three people came from the picket shack area, other than what you just said?

A Well, I would assume, they was dressed in camouflage as was everybody else.

Q Other than the camouflage?

A They were just sitting around the vehicles, these people were.

* * * *

STUMP—DIRECT

[340] THE COURT: Are you aware of any local unions, any activity by any local unions or any member—I mean any persons of authority in local unions taking any steps to try to accomplish this?

THE WITNESS: The only thing I could say on that, your Honor, I know our people at the local are trying to watch and keep up with everything at their picket sites that stays within the jurisdiction of our order, and I guess the Federal Court order, trying to make everything, you know, stay within what the guidelines are set out.

I know that they are doing that. I have heard them, that I done when I checked the picket lines.

I have asked them have there been any problems anything going on. You know, a lot of times maybe some people have stopped by and they have told them "We can only have so many people here, you know, we are sorry, you will have to leave," or something or other like that. I know that they have been doing that.

THE COURT: As far as this Court is aware of the testimony that there have been a lot of UMWA members who have come to Virginia from other places [341] in sympathy for your brothers who are on strike here against Pittston in Virginia, and, of course, in West Virginia and Kentucky. There has been a lot of testimony about these rolling blockades or caravans or whatever they want to call them. You profess not to have any personal knowledge about these. Are you aware of any information that

has been sent out by the International to try to keep these people from blocking the road or impeding traffic in a way that has obviously occurred?

THE WITNESS: The only thing I can say to that, your Honor, is that I am aware that the top three line officers in a telephone conversation with the International executive board had instructed all the people to go back to work, throughout, everybody that was out.

* * * *

BARTEE—DIRECT

[345] Q Have you leased that property to the mine workers or some organization to conduct some activity up there in the last few weeks?

A I leased it to Local 1259, yes.

* * * *

[348] Q When you leased this thing, did a bunch of people roll in out of state, United Mine Workers members?

[349] A Yes, on Sunday.

Q Sunday of what, what day?

A That would have been the twentieth, I guess.

Q Did you know they were coming?

A Not until, I knew that it was going to be set up as a camp but I didn't know who was coming.

Q How did you find out? I guess you had 700 people there at the time, have you not?

A Yes.

Q How many people have you had there at the highest number?

A I would say a thousand.

* * * *

[353] Q Have there been any caravans, long lines of cars that have been organized out there to go out and drive along the road at low speed?

A They take them out every day. There is tour captain that takes them out.

Q A tour captain?

A Yes.

* * * *

McCAMEY—DIRECT

[366] Q Are you Don McCamey?

A Yes.

Q Are you an official with United Mine Workers?

A Yes.

Q What is your position?

A Secretary-Treasurer of District 28.

[367] Q That is an elective position, I understand.

A Yes.

Q How long have you held that office?

A Since June 1 of '87.

Q Have you played any part in assisting United Mine Workers members and their associates who have been arrested with strike activity?

A The only thing I have done in that line I guess is to bond some of them out.

* * * *

Was it the union which was helping on their bond or was it you as an individual?

[368] A We put up the property of the District.

Q When you say "we" District 28 of the United Mine Workers?

A I acted on behalf of them.

THE COURT: I can't hear you.

THE WITNESS: I said I acted on behalf of the District.

BY MR. HODGES:

Q Who approved that activity?

A The official board.

* * * *

[376] THE COURT: Mr. McCamey, are you aware of any of the District 28 funds being used to fund this Justice for Pittston Miners organization?

[377] THE WITNESS: No, sir.

THE COURT: Are you the person who would write the checks?

THE WITNESS: Yes, sir.

THE COURT: Have you written any checks or authorized anyone to draft any checks as donations for this group?

THE WITNESS: No, sir.

THE COURT: Are you aware of any, whether or not any of District 28 or any of the locals with whom you might have knowledge of has contributed funds to the operation of the Camp Solidarity?

THE WITNESS: No, sir, I don't know anything about that.

THE COURT: Has District 28 paid any monies toward the lease of property on which that camp is located?

THE WITNESS: No, sir.

THE COURT: Has District 28 funded any of the purchase of food that supplies that?

THE WITNESS: No.

* * * *

UMWA SELECTIVE STRIKE ASSISTANCE PROGRAM

REVISED 10/87

1. Selective Strike assistance shall be distributed in accordance with the UMWA International Constitution and the rules and regulations approved by the International Executive Board. The Selective Strike Assistance Program is designed to promote the selective strike strategy.
2. The Selective Strike Assistance Program shall be administered by the UMWA International Secretary-Treasurer in cooperation with the International Strike Office.
3. Strike Assistance shall be available, UPON APPLICATION, to all working members in the affected operation and local who are in good standing before a strike begins and who participate in the strike under the rules established by the International Union. Payment of strike assistance is also subject to the condition that the recipient shall observe the selective strike during its entire duration.
4. Members must be in good standing for at least four (4) months BEFORE A STRIKE BEGINS to be entitled to strike assistance without penalty, provided they meet the other qualifications.
5. A member in good standing is one who is not IN ARREARS IN DUES, INCLUDING ASSESSMENTS, AS PROVIDED IN ARTICLE 13, SECTION 10 of the UMWA International Constitution.
6. Any member who owes a selective strike assessment, reinstatement fee, back dues, or a fine shall not be considered to be in good standing and is not entitled to strike assistance.

7. Any member who undermines the selective strike strategy by going to work in a non-union mine or other non-union company within the jurisdiction of the International Constitution shall be terminated from the selective strike program for the duration of the current selective strike. Anyone who was a recipient of strike assistance and returns to work during that selective strike shall owe the International Union reimbursement of all strike assistance previously paid him/her during that strike (including medical costs).

STRIKE PENALTY FOR DELINQUENT MEMBERS

8. A member who is or becomes delinquent in their dues, including assessments, (except in those cases wherein the delinquency was not the fault of the member) and later acquires good standing membership by paying their back dues, including assessments, at any time during the four (4) month period prior to the strike, shall be penalized two (2) weeks' strike benefits for their delinquency.

(A) For each week during a strike a member waits to put himself/herself in good standing, he/she loses another week of strike benefits (in addition to the initial two week penalty) as a penalty for failure to become a member in good standing. For example, if he/she waits 4 weeks into the strike to pay back dues, he/she must wait an additional 6 weeks thereafter, (2 weeks initial penalty plus 4 weeks) until he/she is eligible for benefits.

(B) Any member who pays his/her back dues, including assessments, and/or a reinstatement fee at least four (4) months prior to a strike taking place by his/her Local Union, shall be considered in good standing, and shall not be penalized for his/her past delinquency.

- (C) For each week a member does not report for assignment to strike activity or fails to participate in an assigned activity, he loses a week's benefit in addition to the benefit for the week in which the activity was not performed.
- (D) In the event a Union representative knowingly issues a Selective Strike check to a member who is not entitled to receive a check, they will jointly be responsible for repaying a like amount to the Selective Strike Fund in addition to any other penalties.

NEW HIRES

9. New hires may become eligible for strike benefits only if they join the Union by paying the initiation fee and current month's dues, including assessments, prior to the strike taking place. In the event a worker has made out and signed an application for membership and a Union checkoff card that has been forwarded to the company prior to the strike taking place, he/she would be considered a member in good standing and would be entitled to strike assistance.

MUST BE ON ACTIVE PAYROLL

10. Only members of the Local Union on strike who were on the ACTIVE PAYROLL at the time the strike began, (or those who are denied unemployment compensation as a result of the strike) shall be entitled to strike assistance. Members who are sick prior to a strike and are drawing sick benefits or workers' compensation during the strike are not eligible to draw strike assistance. Special cases shall be responded to in accordance with Article 19, of the UMWA Constitution.

MUST PARTICIPATE

11. You must **PARTICIPATE** in authorized lawful strike activity assigned to you by your Union representative.¹ Your selective strike assignment is not a job but, rather, a responsibility you undertake for the benefit of your union brothers and sisters. Participation in the strike may include services on the selective strike committee, authorized strike activity at your mine, strike information classes, soliciting committee, or lectures or other appropriate lawful activities established by your Union. **SELECTIVE STRIKE MEETINGS AND AUTHORIZED STRIKE ACTIVITY ASSIGNMENTS ARE MANDATORY.**

MUST REGISTER

12. You must **REGISTER** and make application for strike benefits on the day assigned to you by your Union representative. In the event a selective strike is authorized at your operation, each member, regardless of status (inactive or active) must contact his Local Union Selective Strike Committee within thirty (30) days after the strike begins to determine his eligibility for strike assistance. Failure to do so will result in that individual's disqualification.

BENEFIT CHECK PAYMENT DAY

13. You must pick up your strike benefit check on the specific day assigned to you by your Union representative.

¹ NOTE: Only the International President has the authority to call a strike or to pick the targets of a selective strike. A local union or district may not call a strike or authorize picketing related to a strike at any location unless it has been given express authority by the President. A MEMBER WHO ENGAGES IN UNAUTHORIZED PICKETING OR ANY OTHER UNAUTHORIZED STRIKE-RELATED ACTIVITY CAN LOSE HIS ENTITLEMENT TO STRIKE BENEFITS.

YOU ARE NOT ENTITLED TO SELECTIVE STRIKE BENEFITS

14. If you are unemployed.
15. If you are drawing sick and accident benefits.
16. If you are drawing Workers' Compensation benefits.

DURATION OF ASSISTANCE

17. A member shall accumulate selective strike assistance credits beginning with the first day of the strike. For each day's pay missed due to the strike, Monday through Friday, a member shall receive one day's strike benefits at the prorated daily amount.
18. Strike assistance shall be made available to the member beginning on or about the 15th day of the strike.

SCHEDULE OF BENEFITS

19. Strike benefits are paid on a bi-weekly basis.
20. **STRIKING MEMBERS WILL RECEIVE \$— PER DAY FOR EACH DAY THAT THEY ARE ON STRIKE BEGINNING WITH THE FIRST DAY OF THE STRIKE MONDAY THROUGH FRIDAY.**
21. Strike assistance will remain at a constant level as long as adequate funds are available.

INSURANCE BENEFIT

22. **THE INTERNATIONAL UNION, FROM ITS STRIKE FUND, WILL PAY GROUP MEDICAL-HOSPITAL INSURANCE PREMIUMS FOR STRIKING MEMBERS WHO PARTICIPATE IN THE AUTHORIZED STRIKE ACTIVITY ASIGNED TO THEM BY THE UNION REPRESENTATIVE.**

STRIKE RECORDS

23. All procedural records will be furnished by the International Union and must be used in the expenditure of all strike funds.

* * * *

Question 7: Do I have to participate?

Answer: Yes. You must do whatever strike duty is assigned to you.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

vs.

INTERNATIONAL UNION, UMWA, *et al.*,
Defendants

July 20, 1989

Lebanon, Virginia

BEFORE THE HONORABLE DONALD McGOTHLIN, JR.

* * * *

DESKINS—DIRECT

[109] BY MR. MASSIE:

Q Would you state your name, please.

A Joyce Ann Deskins.

Q Where do you live?

A Council, Virginia.

Q Are you employed outside the house?

A No.

Q Is your husband employed, ma'am?

A Yes, at Lambert Fork.

Q How long has he worked at Lambert Fork?

A About three, two and a half to three months.

Q Were you involved in an incident between two automobiles in Lebanon in June of 1989?

A Yes.

Q Would you tell the Court what happened.

* * * *

So before I got out to Revco at the top of the [110] hill out here at Monk Supply I seen a black car coming, and it was going from side to side. All at once the driver's hand went up. I don't know if he was shaking his fist or throwing me a finger or what. Then it was like the whole car, you know, there was a whole bunch of men. I do know the man that was sitting behind the driver's seat in the backseat, he had this much of his body hung out of the car window.

THE COURT: I can't see where you are indicating.

THE WITNESS: From her up.

THE COURT: Indicating from your waist?

THE WITNESS: Yes.

A And he hollered scab at me. I seen, you know, that he was going to hit me so—well I really panicked and I cut my wheels to the right. I had done gotten off of my side of the road. Well, the front wheel got off to the side of the road, and he got the front end of my car with his car. I just stopped my car there, and I looked back and they were still hollering. They called me a name, you know, a bad name.

Q All right. How were these people dressed?

A They had camouflage, green clothes on and hats. I don't know if the man that was driving had a hat on, but the man that stuck his body, his head out the car window, he [111] had a hat on.

Q Were you on your side of the highway when this happened?

A Uh-huh.

Q How far?

A I was all the way on my side and I went all the way off my side onto the parking lot to keep them from hitting me straight in the front.

Q And there was an impact between the two vehicles?

A Sir?

Q Was there a collision between the two vehicles?

A His car hit the front end of my car.

Q What did his car do after that?

A He just took off up that hill.

Q Had you had any warning that this would happen to you?

* * * *

[114] A I got a phone call and this man told me if I come to Lebanon, that they would get me, that they had tried to warn my husband to quit his job; and if I come, they would get me.

Q Did you report this to the police, this car incident?

A Yes. I pulled over at Monk Supply. I was scared to death. I was crying. I didn't know what to do. I was afraid that the men would come back, because they had told me they were going to get me, and it was a carload of men.

I got out of my car. I looked at what had happened. I got back into my car and drove to the Carriage House, because the people behind the man in a black car that hit me, I was screaming for them to stop. They wouldn't stop. They waved and blowed and kept on going behind the car that had the picketers. The people behind me didn't stop, and I was afraid that those men would come back to where I was at and do something to me, because they had threatened me before. So I went to the Carriage House, and there was a State Police named—

* * * *

ADAMS—DIRECT

[157] Q Mr. Adams, do you have an overall responsibility for the total operation of these trucks in these two counties, Dickenson and Russell Counties, Virginia?

A Yes, sir, I do.

Q Can you tell the Court at least approximately how many punctured tires your trucks have had after May 17th up to the present?

A Okay. I had this a little bit different, but I can give you approximately. We have had within twenty to twenty-six hundred flats, pictures in the tires.

Q That would be from May 17th up to the present?

A Up to yesterday.

Q Have you had any broken windows or windshields also after May 17th?

A I really from my notes can't determine that because I had this information from day one of the strike. I really don't have it broken down to month and day.

Q All right, but have you had some broken [158] windshields since May 17th?

A For sure I have lost three windshields in a couple of pickups. In coal trucks I have a different file, and I think we have lost four since that day.

Q Do the coal trucks have any protective device on their windows?

A Yes, sir. We installed Lexan on our trucks to make it quite difficult to break the windshields out, and that seems to have curtailed it quite a bit.

Q Is Lexshield some kind of plastic material?

A Yes, it is. It is a high impact plastic. It is about 350 times stronger than glass.

Q And you have fourteen trucks; is that right, sir?

A Yes, sir, that is correct.

Q Are there other trucks from other companies that are running other Clinchfield operations? Do you know that? Are you hauling all the coal for Clinchfield these days?

A No, sir, I am not. There are other companies that haul coal.

Q And you are hauling from two mines into Moss 3?

A Well at the present time we are servicing or assisting servicing at Yowling Branch, Laurel Mountain and the Lambert Fork Mine at the present time.

* * * *

VICKERS—DIRECT

[160] Q Mr. Vickers, are you employed by Clinchfield?

A By Pittston.

Q By Pittston, all right. What is your job, sir?

A My title is a buyer.

Q What do you really do? What is your daily work?

A During this strike I purchase parts and accessories for coal trucks to keep the coal trucks running.

Q Do you work at the Central Shop?

A Yes, sir.

Q Do you supervise or see the activities that are involved in the repairing of coal trucks and tires?

A Yes, sir.

Q Can you tell the Court at least approximately how many tires have been repaired there at the shop from May 17th up to the present or to a recent date?

A Yes, sir. According to our figures here that we have tallied, beginning with that week ending May 21 through the week ending 7-16, we have replaced 671 tires. That is tires put on. That doesn't count plugs.

[161] Q All right. Tell the Court the difference between replacing and plugging.

A Okay. These 671 are tires that had to be taken off. They were damaged to the point we just couldn't plug them. They had to be removed.

We have had approximately—we didn't have an exact figure on the plugs, but a good estimate would be about 500 plugs.

Q Now do your figures, the six-hundred figure, does that include tires that went down and were repaired on the night shift?

A No, sir. This is just the day shift activity.

Q Do you know whether any tires have been repaired on the night shift?

A Yes, sir. We have about thirty trucks that stay at the operation after the day shift ends; and what they do at night, they try to get these trucks ready for the next morning. There will be some nights that there will be anywhere from ten to twenty tires that they will have to change to have the trucks ready to roll. The tires went down between 7:00 that night after they parked them and the next morning, and there was no record kept of those.

Q And do your numbers include any tires that are repaired over at the McClure facility?

A No, sir.

[162] Q They have a separate tire-repair facility over there?

A Yes, sir.

Q You don't know what their numbers are, I guess?

A I have talked to—

Q Well that is all right. You don't supervise that over there, but do you know whether there is a separate tire-repair facility at McClure?

A Yes, sir.

Q Now do you know how many windshields and other windows have been replaced on coal trucks from May 17th?

A We have replaced 71 windshields.

Q How about other windows?

A No, sir. This is just truck windshields.

Q Does that include light trucks or just coal trucks only?

A This is coal trucks only.

Q Have you had to replace any radiators from damage, being punctured during the strike?

A Yes, sir.

Q How many have you done?

A For this time period there are 19.

* * * *

SANDERS—DIRECT

[225] Q Are you Sam Sanders?

A Yes, sir.

Q Are you the superintendent of the Moss 3 Preparation Plant?

[226] A Yes, sir.

Q Mr. Sanders, do you remember what you and your family were doing on the weekend of May 19th of this year?

A Yes, sir, I do.

Q What were you doing?

A On the 19th at approximately 7:00 p.m. my wife and my children and I left our home. I took my four children—they stayed in Kingsport, Tennessee with my sister. My wife and I spent the weekend and went to Luray, Virginia and stayed away from home.

Q When did you return home?

A Approximately 7:00 p.m. on the 21st.

Q Did you have your children with you when you came home?

A Yes. I picked them up on the way back.

Q Are your children a boy and three girls? Do I remember that?

A That is correct.

Q And what are the ages of your children?

A My boy is four years old, and my youngest girl at the time was eight, and a girl ten and a girl thirteen.

Q As you approached your house, was it after dark?

A No, it was not.

Q Did you find anything unusual around your [227] house?

A Yes. Immediately as I came on the level of the driveway approaching the house, I saw a piece of card-

board on the front doorknob. And evidently my wife saw it about the same time I did, because she looked at me and she said, "They put something on our door."

Q Let me show you Plaintiff's Exhibit 39 and ask you if you know what that is.

A Yes, sir, I do.

Q What is it?

A This is what was on the doorknob of my kitchen door when I returned the 21st at 7:00 p.m..

Q Would you read the verbage there to the Court, please.

A UWMA, we have got your number, wife and four kids. 788-8390. Don't work, question mark, explanation or something.

Q Is 738-8390 your phone number?

A Yes, it is.

Q Are three of your children old enough to read?

A Yes, they are.

Q Did they see this sign?

A Yes, they did see it.

Q Did they read it?

A Yes, they sure did.

* * * *

[228] A My wife and my four children, I think, have all [229] been more apprehensive since this date, since we returned. I have one girl, which is ten years old, and it just so happened on the Thursday, the 18th, previous to this weekend, she had left the house that morning about 7:40 a.m., and my three girls were going to catch the school bus that morning. They have to walk about 800 feet on the driveway. It is gravel. As they left the house down the hill on the driveway about approximately 150 feet, she stepped on the edge of a jackrock. They looked, and it just so happened she had tennis shoes on. If she had stepped over just a little bit further, maybe two or three inches, it would have gone through her foot. There is no doubt in my mind. There were four jackrocks in the driveway.

This same girl, she has had problems since then at night. She wakes frequently at night. She is scared. She is afraid. She is hollering for her dad, me, or my wife sometimes numerous times during the night and as recently as this morning at 4:45 a.m..

* * * *

Q Mr. Sanders, how long were you and your wife and family away that weekend?

A Approximately 48 hours.

[230] Q And with the exception of the fact that the piece of cardboard that you just identified as an exhibit a minute ago, with the exception of the fact it has the letters UMWA on it, do you have any other thing that links it to the United Mine Workers?

A Only the note and a neighbor said she saw two men Sunday morning—

MR. VERGARA: Objection to the hearsay, Your Honor.

THE COURT: You asked him what he had to link it. Go ahead.

A A neighbor that lives across the state highway from me saw two men Sunday morning, she said, at approximately 10:30 a.m.. One was in a red pickup. The other she thought was returning to the pickup down my driveway, and he had a paper bag over his head. She could not identify either man.

Q Do you have anything else of your personal knowledge?

A You are asking my personal knowledge. There were two men in camouflage that my wife saw earlier.

Q I am asking of your personal knowledge.

A Only what my wife saw.

* * * *

CRICKMER—DIRECT

[296] Q Tell the judge about what that was and how it happened and about when it was.

A On the state court hearing I think around the 16th of May, a day or two after that, I was in the Moss 3 scale house there. There was a large group, two or three hundred estimated across the street at the entrance to the raw coal pile. Mr. Hudson was on the bullhorn talking to the crowd about various things.

Q Excuse me. Is that Marty Hudson?

A Yes, sir, Marty Hudson. He was talking to them about various activities, I assume. I just so happened to start listening more intently, I guess. I heard him calling out this as the trucks pulled in and caught us offguard. He would call a man's name, and every witness we had had in state court in the day or two before, Vance Security and State Transport drivers, I noticed he would call them out by name. He would say—there was one phrase that was—let me think one second. He said, "We know who you are." Then he would pause a minute and he would say, he would turn to the crowd and I watched. I was right there. He would say, "And we don't believe in violence, do we?" and they all laughed and jeered. And these people were stopping their trucks right there amongst two hundred people. He did that many times in a period of time.

* * * *

DIRECT—HARTSOCK

[11] Q Now, can you tell the court what happened when you went up there?

A Well, I, when I got to the area, there were several cars and trucks in line, pickup trucks and cars. I drove up to the picket shack, and I was going to stop for a minute and visit with them, and they was a string of traffic a-coming meeting me, and I was going to turn in, but there was so much traffic I seen I couldn't get in, so

I just eased on up the road and was going to turn and come back down and stop.

Just as I passed the picket shack, a state trooper pulled me in, motioned me in and gave me a ticket for impeding traffic.

Q Okay. Now, were there any vehicles in front of you at that time?

A Yes, there were vehicles, they were, due to the fact that I was aiming to turn off, they was approximately a hundred yards ahead of me, there was a string of traffic, yes.

[12] Q A hundred yards a head of you?

A Yes, sir.

Q Were there any vehicles behind you?

A Yes, there was. There was some cars and Blazers and things of that nature.

Q Did you see any coal trucks behind you?

A No, sir, I did not.

Q Do you know approximately what speed you were traveling?

A Well, I don't know for sure. It would be a mere guess, you know, if I told you. I was just going slow, maybe fifteen mile an hour, something.

Q Now, had anyone asked you to come up on that particular day?

A No.

Q How did you decide on that particular day to go up into the area?

A I just decided that morning that we'd drive up through there.

Q Now, do you remember what you were wearing the day you were stopped?

A Yes, I do.

Q Can you tell the court?

A Well, I was wearing a pair of blue uniform [13] that I used to wear to work, pants and shirt.

Q Did it have any type of reference to UMWA?

A Yes, it did. It had a patch on here, said International Representative, United Mine Workers.

Q Now, at that time were you still an International Representative?

A No, sir.

Q Was this your uniform?

A Just an old work shirt that I worked in around the house, and I put it on.

* * * *

DIRECT—BALES

[29] Q Let me stop you one minute. What truck, what kind of truck was it?

A The car, it was a tandem, not a tandem but a trailer, tractor-trailer, and he was hauling coal.

Q Did he have, was there a name on the side of the truck?

A It was Valley Trucking.

Q Okay, go ahead.

A And we had pulled up to the intersection. We noticed the security guard was out there, Vance Security, and he had, he was out with his camera looking around the road and everything, and just as we pulled up the truck driver, Rodney Cox came out, and he just slung a jack rock right out in front of you.

Q Now, did you see the jack rock?

A We see'd the jack rock come out of his hand.

Q All right. Now, the man from Vance Security, where was he located in relation to Mr. Cox at this time?

[30] A Well, he probably about four feet away with his back turned to him.

Q All right. Do you think that the man from Vance saw Mr. Cox do this?

A I don't think he saw it, but I think that he knew it was being put down there.

MR. HODGES: I object, Your Honor.

THE COURT: Sustained.

Q (By Mr. Shults) All right. Now, Mr. Bales, what happened after that? What happened next?

A Well, he came down out of the truck, run around in front of the truck and just took the jack rock and threw it right out. We were no more than probably fourteen feet away.

Q Is there a picket shack there?

A There was a picket shack at the intersection, which was later moved.

Q Okay. Did the people at this, did you as a picketer or did the other people who were picketers, had they had any problems with jack rocks?

A Well, they had had problems. Myself, I had had problems because I had pulled up in front of the picket shack there one time to deliver food, the first thing I picked up was jack rocks in the front tire.

* * * *

DIRECT—VIARS

[41] Q (By Mr. Shults) Mr. Viars, did you ever have occasion to observe any jack-rocking activity regarding the Vance Security people?

A Yes, sir, I did.

Q All right. Now, I want you to be as specific as you can and tell the judge about the episodes that you witnessed.

A I witnessed it on two different occasions, they come down—

Q Do you remember when it was?

A This was in the last part of May and early [42] part, the first part of June.

Q All right.

A Vance Security come down before the police officers arrived that morning.

Q Did the troopers stay at your location all, all night?

A No, sir.

Q All right. During the day, what hours would they be there?

A They would show up anywhere from six to seven o'clock of the morning and stay to like nine and ten o'clock of a night. And then they would leave, just come back at different times, you know.

Q All right. Go ahead with your story.

A And right after daylight one morning it was something like six, six-thirty, I witnessed Vance Security come down, and they brought, it was seven or eight, something like that, and some of them had on their riot hoods and stuff like this, and they brought a camera down and placed jack rocks in front of our picket shack and took pictures of them, and it's two mud holes directly in front of it. They'd place one in the mud hole and take a picture of it, then move it over to another mud hole and take a picture, then move it over on the dry surface and take pictures.

[43] Then they'd take pictures of us a-standing there at our picket site.

Q Now, did that, was that, basically, the events on both occasions?

A Yes, sir, same events.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

vs.

INTERNATIONAL UNION, UMWA, *et al.*,
Defendants

TRANSCRIPT OF THE EVIDENCE INTRODUCED AND PROCEEDINGS HAD upon the hearing in the above-styled case in the Circuit Court of Russell County, Virginia, on September 13, 1989; the Honorable Donald A. McGlothlin, Judge of said Court presiding.

* * * *

TROOPER KVASNICKA—DIRECT

[53] Q Now, during this time of impeding traffic, did you observe any of the leaders of the International Union?

A Yes, sir.

Q Who and where did you observe these people?

A On the 10th I observed Mr. C.A. Phillips in the area. He was riding in a white Jeep pickup truck. I saw him parked at Route 600 and 621, at the Wilder Intersection, and again a little later on that day I saw him at Moss 3, parked alongside of the road. And on that day, also, I observed Jackie Stump and John Cox sitting stationary at Moss 3. That was around 3:30 in the afternoon.

Q Did you record any activity on July 11th?

A No, sir. There was little or no traffic in the Moss 3 area on the 11th.

Q What about on the 12th?

A Yes, sir. On the 12th, at approximately 10:15 a.m., [55] there was a large group, over 200 vehicles from out of state, Alabama, West Virginia, Pennsylvania and Ohio, came into the Moss 3 area and around 11:00 we started having impeding traffic and started making charges.

Q Did you observe any union leaders on that day?

A Yes, sir. I observed Mr. Phillips, C.A. Phillips, in the same white pickup ride by Moss 3 around 11:30 that morning. He came back again around 12:00. I saw him have a conversation with Mr. Blaylock. He left. About 12:40 I saw Marty Hudson at Moss 3. A little while later C.A. Phillips came back and around 1:00 or 1:30 they departed.

Q How long did the impeding go on that day?

A All day.

Q What was the activity on the 13th of July?

A The traffic was not as heavy as the day before. It was some impeding going on, but on the 13th we began to have large groups gather up and down Route 600, Route 621 and over on Route 601, and we had several incidents of rock throwing and quite a bit of jack rocks being thrown in the road.

* * * *

[71] Q I believe earlier in your testimony, you can correct me if I'm wrong, earlier in your testimony when you were describing some of these groups of people that were on the wide spots on the side of the road, you referred to them as pickets, was that correct?

A Yes, sir.

Q Is there anything in particular that made you conclude they were pickets?

A That's what we refer to them as. I mean, nobody came to me and told me they were pickets. I mean, that's just my [72] conclusion.

Q Because they had camouflage on?

A Yes, sir.

Q That was the sole connection you had to decide they were a picket?

A I suppose.

* * * *

TROOPER GUILLIAMS—DIRECT

[92] A (The witness continues.) On July the 25th, at approximately 10:00 a.m., I was at the Moss 3 scale house talking to a supervisor when I observed, looking to my left or toward the Carbo area, a long line of traffic, like a procession coming down the road. And these vehicles filed to the left off of State Route 615 and parked on the side of the road on either side of the entrance into the Moss 3 Preparation Plant. These vehicles were filled with people dressed in camouflage and blue jeans and other various clothing. Some of the pickup trucks had two or three people in them, some had as many as eight and ten. A group of about nineteen people moved over into the entrance, off of 615 into the entrance of Moss 3 Preparation Plant and sat down in the roadway, blocking coal trucks that were attempting to make a turn into that.

* * * *

[94] Q Was there any group of camouflage dressed individuals not in the road, blocking it?

A Yes, sir.

Q How many would you estimate in that group?

A I would estimate approximately seventy people to the left and to the right of the group seated in the roadway.

Q When did they arrive in reference to the time that the ones who sat down in the road arrived?

A Just within seconds. There was a line of vehicles with these people in them.

Q Was Mr. Cecil Roberts one of the ones arrested by you for blocking the entrance to Moss 3 on that date?

A Yes, he was.

* * * *

TROOPER JONES—DIRECT

[116] Q All right. Were there any events involving a picketer the 19th of July?

A Yes, sir, there were.

Q And what were those events?

A At approximately 8:50 a.m., I was called to Route 600 about two miles from 621. About twenty picketers were out and several jack rocks were thrown under a truck causing a flat tire.

Q Did you take any action?

A Yes, sir. I declared an unlawful assembly and dispersed them.

Q Did you have any other events that day?

A Yes, sir. At approximately 8:58 a.m., we were going toward 600—or 621 on Route 600. We were approximately a mile away from it. We had to stop because of a situation in front of us. A truck had stopped. There were several jack rocks laying in the middle of the road. Approximately, twenty miners or twenty picketers were on the left side of the road. I witnessed a man run to the back of a pick-up truck. When he got to the back of the [117] pick-up truck, I was only about fifteen feet away from him in a car. He was watching a trooper on foot that was picking up jack rocks on the other side of the pick-up truck. He reached his hands into the jacket and started throwing jack rocks out of the jacket and onto the ground in front of me and the other trucks, trying—he was trying to get rid of the jack rocks before the trooper got there.

Q And how was he dressed?

A He was dressed in camouflage.

Q And how were the other people, at that location, dressed?

A They were all dressed in camouflage.

Q All right. Were there any other events that day, the 19th?

A Yes, sir. At 10:50 a.m., I declared an unlawful assembly because of jack rocks in the road on 600, about

a mile from 621. There was approximately twenty picketers.

Q All right. How were they dressed?

A All in camouflage.

Q Were there any other events that day?

A Yes, sir. At 11:50, another unlawful assembly that I declared on Route 600, about three miles from 621. This time there were seventy-five people. They were all dressed in camouflage. I did see the rocks. There were approximately fifteen jack rocks laying in the middle of [118] the road.

Q All right. Continue with any other events that day.

A Yes, sir. At 12:40 p.m., we were called to jack rocks the road on 621, approximately four miles from 600. There were approximately fifty picketers on the side of the road. One arrest was made for jack rocks in the back of a pick-up truck that were laying in open sight.

Q And how were those people dressed?

A All in camouflage.

Q Any other events that day?

A Yes, sir. At 1300, I declared an unlawful assembly on Route 621, a half mile north of 601. Thirty people were involved and jack rocks were thrown, but I didn't see jack rocks. The troopers picked them up off the road.

Q And was that all the events for the 19th that you have recollection of or a note on?

A Yes, sir.

Q Now, just to review this, Sgt. Jones, how many unlawful assemblies did you declare on that one day?

A Seven.

* * * *

[125] Q Now, were you also on duty on July 28th?

A Yes, sir, I was.

Q Did you see any picketing activity on that day?

[126] A Yes, sir. I was back at Moss 3 in Russell

County along 600 and 621. That day between 9:00 and 2:00 p.m., eleven windshields were broken on Route 621—excuse me, Route 600, the first four miles of 600 or 621 on up.

* * * *

Q Sgt. Jones, have you ever employed a metal detector in the course of your strike related duties?

A Yes, sir, I have.

Q What do you do with a metal detector?

A We search for jack rocks.

[127] Q Do you find any?

A Yes, sir.

Q Well, tell me what your mode of operation is when you employ a metal detector?

A We go to areas where the picketers are bunched up and we get out of the vehicles and get the metal detector out and go between their parked vehicles and behind the vehicles near where they are standing, and we use the metal detector around them.

Q Are you always successful in finding jack rocks when employing this technique?

A Yes, sir, a hundred percent of the time.

Q Do you find large numbers, small numbers?

A We found, approximately, twenty-five pounds yesterday.

Q Have you ever seen any staging of vehicles at the Cleveland ball park.

A Yes, sir, I have.

Q What have you observed at the Cleveland ball park?

A At certain times in the morning, vehicles come from every direction and congregate in the parking lot at the Cleveland ball park. We estimate, approximately, 125 to 175 vehicles daily. They hold a meeting inside the building down there for, approximately, fifteen to twenty minutes every morning and then they proceed out. Sometimes in large groups, sometimes a few at a time, and [128] they go in different directions.

Q And where are the principal places they go once they leave the ball park?

A Most of them, in my experience, have come to Moss 3, to Route 621 and 600.

Q All right. How about 616, Chaney Creek?

A Yes, sir. They go up there, too, but not quite as often as 621 and 600.

Q And after they deploy, as you have just indicated, shortly after that, do you begin to see jack rock incidents and rocking incidents?

A Yes, sir.

* * * *

TROOPER IVEY—DIRECT

[156] A In the morning, around 7:00 a.m. that morning, we have a man posted at the ball field in Cleveland monitoring activity there. Approximately, 200 pickets gathered at that location by the hour of 7:00 a.m. in the morning. Then we monitored their movement from the ball field up 615 to 621 and Route 600 in Russell County, just up from [157] the scales. People got out of their vehicles and lined the road.

* * * *

A We took a report. From 8:00 a.m. till 11:00 a.m. there were five unlawful assemblies called by Sgt. Martin and I was with him when he called those unlawful assemblies.

* * * *

[158] Q Did you observe any damages to vehicles that had come through these areas, in particular, coal trucks?

A I would observe the vehicles moving from the direction of the Prep Plant and either go up Route 600. I generally stayed right here. There's a large parking area, and be able to respond to either location, I generally stayed right here, so I was in a position to see most of the vehicles coming back from the mine. But I would

notice them coming from the Moss 3 plant, certain vehicles, and I'd note that windshields were in good shape. After they had went up and got loaded up at the mines and came back by my location, I'd notice numerous [159] vehicles had broken windshields.

* * * *

A Marty Hudson. He was at the location. Again, I was parked right here.

Q You're pointing—when you say here, that's the Wilder Intersection?

A That's the Wilder Intersection. I was parked here and Mr. Hudson was parked in a black Blazer with Virginia registration here on the shoulder with a group of five or six pickets.

Q Did you observe any—let me ask you first, were there any pickets up and down 600 and 621 that day?

A From August 24th, it was very similar to the situation I described on the 14th. Again, approximately, 200 vehicles gathered at the ball field and then they caravaned to that location.

[160] Q The same day Mr. Hudson also appeared?

A Yes, sir. That was August 24th.

Q Did you record any damages to vehicles the day Mr. Hudson was there?

A That particular day we took twenty-two State Police investigative reports on missiles thrown at vehicles with broken windshields. And that was between the hours of 8:00 a.m. to 11:00 a.m. This was done in a three-hour period.

* * * *

TROOPER CHILDRESS—DIRECT

[169] A Well, I noticed—I was responsible for Russell County on the late night shift. And I noticed that there was a meeting at the Cleveland ball field area comprising of approximately, 150 to 200 vehicles. So I brought that to the attention of the people I was super-

vising. And when the meeting broke up, the vehicles left the meeting area there at Cleveland and then came out into the Moss 3 complex area.

Q Did you see about how many vehicles there were?

A Somewhere in the neighborhood of about 150 or so vehicles.

Q And when they came to the Moss 3 area, what did they do?

A A large group of people collected there at the intersection right down from the Moss scales, which would be on 600—615. Anyhow, it's called the gravel pit area, right there. And there was a large group of about 100 to 125 people collected in that side of the intersection, across the road from where I was sitting. I was sitting at the Moss 3 scale complex over there in the parking lot observing the group of people that was across the road from me. There were a couple of other troopers that were stationed back behind me on the other side of the scale complex. There was another group that had also collected [170] on the opposite side of—let's see, I guess you'd call it 616 and 615, in between 616 and the other section of 616 that goes up over the mountain down towards the golf course. And, at the time, that I was sitting there at the scale house area, I was monitoring the CB traffic, and the traffic was describing—what the traffic was, was friendlies and unfriendlies that were coming from one area to another.

MR. SHULTS: Objection to hearsay, Your Honor.

THE COURT: The objection is overruled.

Q (Mr. Hodges continues.) All right. It was describing friendlies and unfriendlies?

A Yes, sir, it was describing friendlies, unfriendlies, and what was ascribed as zeroes. And after listening to the CB traffic for a period of time, I heard traffic saying that an unfriendly was between two zeros and coming towards a particular post number, which I don't remember the post number. However, at that time, I had called

some troopers to come and meet me and they were the only ones moving, at that particular point. And I knew which direction they were coming from. They were coming from the Laurel Mountain area down towards the scales, down Route 600. So, as the headlights approached the rise, I cut my high beam headlights on the crowd that was collected across the road there from where I was sitting. [171] And, as the vehicles topped the rise, the first vehicle which was a marked State Police car went by. As the second vehicle, which was a civilian vehicle, came by, it was rocked and jack rocked. And then the third vehicle, which was a State Police vehicle, came by. At the time that I observed the rocking incident, I then told the other units to come with me and we went over to the group where they were located. I attempted to keep sight of individuals who had thrown the rocks, but the individuals faded back into the crowd itself. As I mentioned, there was about 100—125 people there. So, at that point, an unlawful assembly was declared and the crowd dispersed without incident.

Q All right. And about what time of the night was that, sir?

A This would have been at 11:41 p.m.

Q Were there any other events that night before midnight?

A There were other events right about this same time, but there would be sporadic events. We would be called to a rock throwing incident at one place or another and I would dispatch a trooper to that particular location. Then I would hear traffic on the CB radio saying that a trooper or a zero was enroute down there and for the people to get away from the scene. And we didn't locate any other crowds around where other activities occurred.

* * * *

BANOVIC—DIRECT

[215] Q Are you John Banovic?

A John J. Banovic.

Q B-A-N-O-V-I-C?

A Yes, Sir.

Q And you're the Secretary/Treasurer of the United Mine Workers of America?

A Yes, sir.

* * * *

[224] Q Has any union member ever suffered any financial sanction as a result of any strike misconduct from April 5th to the present, pertaining to the Pittston strike?

A Not to the best of my knowledge.

Q Has any miner suffered any other sanction other than a financial sanction through union disciplinary activities as a result of the strike that's going on against Pittston?

A Not that I'm aware of.

* * * *

[225] Q Camouflage is the official uniform of the Pittston strike, is it not, Mr. Banovic?

A It looks that way.

Q It looks that way. It's true. It doesn't just look that way, it's true, isn't it?

A Yes.

* * * *

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, VIRGINIA

CLINCHFIELD COAL COMPANY, INC.

vs.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA

APPEARANCES:

STEPHEN M. HODGES, Esq., Abingdon, Virginia

WADE W. MASSIE, Esq., Abingdon, Virginia

KARL K. KENDIG, Esq., Lebanon, Virginia

Counsel for the Plaintiff

JAMES M. HAVILAND, Esq., Charleston, West Virginia

WILLIAM D. SHULTS, Esq., Washington, D.C.

JAMES J. VERGARA, Jr., Esq., Hopewell, Virginia

Counsel for the Defendant

Hearing of September 14th, 1989

* * * *

SMITH—DIRECT

[103] Q Are you Hope Smith?

A Yes. -

Q Are you married to an employee of Clinchfield Coal Company?

A Yes.

Q And did anything unusual happen to you on July 6th of this year?

A Yes.

[104] Q Will you tell the Judge what happened, please?

A I was walking back from the doctor's office to my apartment and two strikers in their car—Well, one was coming down the steps from my apartment. When they

passed me, I was verbally abused, cussed. When I got to my apartment, there was a note on the door.

Q Now, these people that passed you in your apartment, when they verbally abused you, did they threaten you in any way or say anything other than just cussing you?

A They told me that if my husband didn't quit working over there that I would be hurt.

Q You would be hurt?

A Yes.

MR. HODGES: Is our next exhibit No. 40?

THE COURT: 41, I believe.

Q Mrs. Smith, let me show you a copy of a document that I've marked as Plaintiff's Exhibit No. 41. Is that a copy of the paper that you found on your front door after you talked to this man or after he had talked to you?

A Yes, but there's a word missing.

Q All right. Was the word that's missing an obscenity that starts with F?

A Yes.

* * * *

HELBERT—DIRECT

[137] Q Are you Robert Helbert?

A Yes.

Q Are you employed by Clinchfield Coal Company?

A Yes, sir, I am.

Q How long have you worked for that company, Mr. Helbert?

A Approximately—I started in '72 so approximately—I've been laid off a time or two so I'd say twelve or thirteen years.

Q All right, sir. In early August of this year before you were injured, were you working at the Lambert Fork mine?

A Yes, sir.

Q And did you come under attack on the early [138] morning hours of August 17th?

A Yes, sir, I did.

Q At that time, were you trying to go from the Lambert Fork mine to your home which would have taken you through the Town of Cleveland?

A Yes, sir.

Q Now, about what time did you leave the mine that night?

A I left the mines at approximately 4:05.

Q All right. And did your route take you down what's called the Chaney Creek Road?

A Yes, sir.

Q Do you know what route number that is?

A No, sir, I don't.

Q As you went down the Chaney Creek Road, does it intersect with another road, Route 615 at the bottom of the mountain?

A Yes, sir.

Q Now, as you approached that intersection, Mr. Helbert, were you alone?

A Yes, sir.

Q What kind of vehicle were you driving?

A I have a Samari Suzuki.

Q Samari?

[139] A Yes, sir.

Q As you approached that intersection, what happened to you?

A As I approached the intersection, I noticed something in the road and I proceeded to slow down thinking it may be jackrocks or something. And as I started, I flipped my lights up on bright. I felt the tires go and flipped my lights up on bright and just saw rocks coming from everywhere.

Q Were there a lot of rocks at that time?

A Yes, sir.

Q And was your vehicle hit by some of the rocks?

A Yes, sir.

Q About how many times would you estimate it was hit?

A At that point?

Q Yes, sir.

A Possibly a hundred places.

Q Did you see any people?

A I saw people.

Q Could you tell anything about them? Could you see how they were dressed?

A Yes, sir. I'm sure I saw camouflage.

Q You're sure you saw camouflage?

[140] A Yes, sir.

Q About how many people did you see?

A Probably more than a hundred, a hundred and twenty-five.

Q Were they on both sides of the road?

A Yes, sir.

Q I take it you had one or more flat tires by the time you got to that intersection?

A Yes, sir.

Q Did you then make a left turn on 615?

A Yes, sir.

Q That would put you going down toward what we call the Carbo intersection?

A Yes.

Q And as you proceeded along that road, what happened to you?

A Well, there is some dumpsters up the road about a quarter of a mile on the left. From the time I left the intersection at Gravel Lick and Chaney Creek, rocks were sporadic up to that point where the dumpsters were at and then rocks came again there.

Q Did you see any people?

A Yes, sir.

Q About how many were there?

[141] A The only thing I can remember at that time was the parking area. The parking area was full there and there was people on both sides.

A Yes, sir.

Q Could you see how they were dressed?

A No.

Q About how many times was your vehicle struck when you went through that group?

A Possibly fifty or more.

Q Did you then proceed down to the Carbo intersection?

A Yes, sir.

Q You were going to take a right at that intersection?

A Yes, sir.

Q Were there any people in that vicinity?

A Yes, sir.

Q About how many were there?

A Twenty-five or more.

Q Did you come under a rock attack?

A Yes, Sir.

Q How many rocks hit your vehicle there?

A Several. Twenty plus. I'm not for sure. It was hit several times.

Q Could you see how those people were dressed?

[142] A No, sir.

Q You then made a right turn at the Carbo intersection?

A Right.

Q Did you have any more rockings after that?

A No, sir.

Q You had at least one and maybe more flat tires at that time?

A Both the front tires were flat.

Q Where did you finally get help, Mr. Helbert?

A I drove to the—There is a sewer plant just outside of Cleveland. I drove to there and saw a trooper sitting on the side of the road and I pulled in in front of him.

Q Mr. Helbert, in your years of working with the company, have you traveled these roads at night other times before this strike began?

A Yes, sir.

Q Did you ever see large groups of people out standing beside the road at night before the strike began?

A No.

Q Did you ever have anyone throw any rocks at you before this strike began?

A No, sir.

[143] Q Mr. Helbert, let me show you Exhibit 42 and ask you if you know what that shows?

A It's a picture of my vehicle.

Q Is that after your vehicle got through the events you've just described to this Court?

A Yes, sir.

Q Let me show you Exhibit 43 and ask you what that shows.

A That's a picture of the inside of my vehicle.

Q Have you inspected your vehicle sometime after you—Within the last couple of weeks, have you looked at your vehicle in detail?

A Yes, I have.

Q Did you find anything unusual in there other than the wreckage that we can see in these pictures?

A Up under the seat, I found a roller bearing approximately an inch and a half in diameter.

Q Like a ball bearing?

A Like but shaped about three inches long.

Q Mr. Helbert, were you injured in these attacks?

A Yes, I was.

Q Do you know which area you were in when you had your first injury?

A At the intersection at the golf course, at [144] the Chaney Creek Intersection.

Q What injury did you get at that location?

A I was hit in the face with a rock.

Q What injury did that cause you?

A A cut in the nose.

Q And after you went on down the road, did you have any more injuries?

A Yes, sir.

- Q Where did you receive your next injury?
 A At the Carbo intersection.
 Q What injury did you receive there?
 A A rock came through the window and hit my hand.
 Q Which window did it come through?
 A Left.
 Q Is that your left hand?
 A Yes, sir.
 Q Did it injure your left hand?
 A Yes, sir.
 Q What did it do?
 A It broke my little finger.
 Q Is your hand in still some sort of a brace or a device, two fingers of your left hand?
 A Yes, sir, and I have steel pins in my little finger.
 [145] Q Did you have to be hospitalized?
 A Yes.
 Q How long were you in the hospital?
 A Two days.
 Q Are you still off from work recovering from these injuries?
 A Yes.
- * * * *

CRICKMER—DIRECT

[151] Q Have you noticed any distinct phases or changes in the general strike activity around the Moss 3 area since the strike began?

- A Well, yes, sir, it's gone through distinct phases.
 Q What was the first phase? What was happening during the first phase?
 A In April when the strike started, you had, you know, your pickets and Clinchfield employees primarily that were off on strike, very few outsiders, stay out here in picket shacks. A lot of jackrocking was taking place

and a few isolated incidents. The rocking, there was no definite pattern to it in April. Along toward mid April and the end of April, we started getting the sit down stage. They were blocking the entrances to the plant and various operations we've testified here in Court about. Lambert Fork was blocked, Laurel Mountain was blocked by groups of people sitting down. The hot spot, I guess you could say, was Moss 3 preparation plant. We had at first massive groups of a hundred or maybe more who decide to sit down and block. And then as arrests were taking [152] place, they tuned that down, say, to ten, twelve designated individuals or whatever to sit down. And this continued throughout May.

Q Did this sit down activity occur almost every working day?

- A Just about every day.
 Q During late April and May?
 A Just about.
 Q And did you ever observe any union leaders around supervising the sit downs?

A There were a lot of various union officials that were observed at the local areas from local presidents. About all your local presidents were there, district presidents, Jackie, the International figures, T. A. Phillips, Marty Hudson, John Cox. They were all present during this period. I guess the prominent figures were Jackie Stump and Marty Hudson. Marty was there a lot on the bullhorn and Jackie was there a lot on the bullhorn.

Q You say on the bullhorn?

A Yeah, they coordinated the activities primarily at the Moss—Moss 3 preparation plant, you have to imagine you have maybe five hundred or eight hundred people involved with the union on the strike in one area, thirty or forty troopers there. It was a staged event [153] daily, almost every day, sit downs. And then after the staging was over with, they would back up and go home.

Q Would they all go home at the same time when that day's sitdowns were over?

A Generally. Not completely, you know, not a hundred percent but generally they would have their lunch break. You've seen that if you're out at the strike. They have definite patterns they follow.

Q Now, what was about the largest crowd by estimation that you saw around the Moss 3 plant during the sit down phase?

A They estimate a thousand people at a time.

Q Now, did the sit down phase come to an abrupt end?

A Pretty abrupt there about the first part of June.

Q Was that right after we had a hearing in this Court?

A That's correct.

Q And was that one June 2nd that the hearing was held in this Court with this Judge?

A That's correct.

MR. HAVILAND: Objection to the leading.

THE COURT: Sustained.

[154] WITNESS: Well, actually the 3rd, 4th, around there, is where it just quit just about. You started the roving blockades. That was the next step.

Q Is this what you consider a separate phase then?

A The roving blockade is a definite second phase.

Q Tell me what happened during the roving blockades?

A The roving blockade went through a series of sub phases. The roving blockade started out first with generally local people just like their sit downs did. You had a few out of staters. The sit downs started with basic local people. They built up at the end they had masses of out of staters in the sit down phase. And the roving blockade did the same thing. It started out there the first part of

June with small groups of primarily local individuals, local people meaning people that had worked at Clinchfield prior to the strike. You had a few Westmoreland people, a few Island Creek, a few outsiders but not the strength it was built up to later on in June. Along about mid June, the 20th, 19th, around there, after another Court date in Federal Court—Well, it was actually after a rally is what it was. They jumped up to a large out of state faction in the roving blockade to the point that in this loop area at Moss 3 preparation plant, [155] in this area right here, a wide intersection, the Carbo intersection, was bumper to bumper traffic to the point that you couldn't even pull onto the highway. There would be times when people would be trying to pull on, myself included, onto the main highway there that you would be held up in the parking lot for thirty minutes at a time. This went on up to the first part of July, the second week in July.

* * * *

[157] Q During the rolling blockade phase, did you ever observe any union leaders taking part in it?

A Yes, sir.

Q Who did you see and what did they do?

A John Cox, International representative.

* * * *

BAKER—DIRECT

[209] Q Were you at any of those meetings?

A I was at all but two thus far.

Q How frequently are they held?

A They are held every Wednesday night at 7:00 o'clock.

Q Now, referring to the ones you've been to, have any instructions been given as to how these striking Pittston employees are to conduct themselves?

A At a number of them, and I can't say at every one but a number of them, there's been messages passed

through whoever was speaking. At times vice-president Roberts spoke, at times President Trumka spoke. There have been times where other labor leaders have come and spoke and other church affiliated people have come and spoke. And we continually stress at those particular functions the importance of maintaining a non-violent, a lawful, means to win this dispute.

* * * *

DURAY--DIRECT

[258] Q Mr. Duray, I'm going to hand you what's previously been marked as Defendant's Exhibit No. 3 and ask you to review that. Are you familiar with that document, Mr. Duray?

A Yes, I am.

Q And did you have any responsibilities in terms of the distribution of that document?

A Yes, I did. My department oversaw the printing [259] and the mailing of this letter.

Q And where was the letter printed?

A The letter was printed at Kelly Press in Landover, Maryland.

Q And what was the distribution number for that particular letter?

A It was approximately thirty-five hundred.

Q And who was the letter sent to?

A The letter was sent to the membership, I believe excluding pensioners, of the Pittston locals which were called out on selective strike on April 5th.

Q Now, Mr. Duray, are you aware that Judge McGlothlin's order of July 27th, confirmed by his subsequent order of August the 17th, contained a provision regarding distribution for his orders to every member of the United Mine Workers?

A Yes, I am.

Q Did you have any part to play with regard to carrying out that order?

A Yes. Again, I oversaw the printing and the mailing of that order to our entire membership in the United States and Canada.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiff
vs.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,
Defendant

HEARING

The following hearing was taken on September 18, 1989 at 9:00 a.m., in the Circuit Court of Russell County with The Honorable Donald McGlothlin, Jr.

PRESENT:

KARL K. KINDIG, Esquire
WADE MASSIE, Esquire
STEVEN M. HODGES, Esquire
Counsels for Plaintiff

WILLIAM O. SHULTS, Esquire
JAMES M. HAVILAND, Esquire
Counsels for Defendant

BLACKBURN—DIRECT

[16] Q What happened when you were trying to come back to work?

A I was coming up Frying Pan Mountain and met a truck and he shot, it was four or five rounds into my Jeep.

Q Four or five rounds from a firearm?

A Yes, sir.

Q Where did he shoot them, Mr. Blackburn?

A One went threw the windshield and hit the hood and the fender and the side of the dash.

Q Did he put a whole in your windshield?

A Yes, sir, he did.

Q Did you get a look at him?

A I got a look at him but, I didn't, I couldn't really identify him.

Q Could you tell The Court very generally what you did see as far as his appearance?

A White beard.

Q Had you taken any action against a person with a white beard just before that in court?

A Yes, sir. Friday morning I had a guy arrested on, for throwing rocks. He had a white beard.

[17] Q And, do you know what kind of vehicle this was that the fellow shot from?

A No, I couldn't tell if it was a Ford or a Chevrolet but, it was a truck.

Q Let me show you Plaintiff's Exhibit Number 2 and ask you if you can identify that?

A Yes, that's the hole in my windshield of my Jeep and the fenders and stuff where they rocked it and the hood.

Q Now, you say you got shoot on one occasion. You testified about being rocked going home earlier in that weekend?

A Yes.

Q Does this picture show any of the damage you got from the rock attack?

A Yes, sir.

Q Where are they?

A The hole in the window here on this side, the hood, the fenders.

Q And, how about the, is there a bullet hole in your windshield in this picture?

A Yes, right over top of the steering wheel.

Q And, were there other bullets that went into your vehicle on that occasion?

A Yes, sir, there was three more.
 [18] Q And, what month was that in?
 A To be honest, I don't remember.
 Q Was it in either the months of July or August?
 A I believe it was in August.
 Q If it was in August, was it early in August?
 A Yes.
 Q Did you actually see this gun?
 A You could tell it was a handgun.
 Q Did you see it yourself?
 A Yes, when it come, he just stuck it out the passenger, the driver's side of the window.
 Q Now, shortly after that event, did you have any other invents involving shooting?
 A Yes, sir, I did.
 Q How soon after that did you next have a shooting incident?
 A It was the next morning.
 Q The next morning? What happened then?
 A I was coming down the road in my coal truck and it was, I met a red S-10, had two pickets in it dressed in camouflage.
 Q A little louder, please, we can't hear what you're saying.
 A The next, it was Monday morning, I was coming back down the road empty in my coal truck, I meet a red S [19] 10, there was two guys in camouflage in it. The one in the passenger side stuck a handgun over the cab of the truck and shoot into my windshield of my coal truck.
 Q I'm going to show you Plaintiff's Exhibit 3, 4, and 5 and ask you if you can identify those pictures?
 A Yes, sir, that is the bullet hole in the windshield of the truck.
 Q All right, what do the other two show?
 A It shows the truck sitting there with the bullet hole in it and the other one shows the bullet hole over the steering wheel of my truck.

Q Now, sir, do you remember an event on August 9th at the Skeens Fork intersection involving rocking?
 A Yes, sir, I do.
 Q What happened there on that day?
 A That was the day that they had that last sit out on us and all the Troopers was down here at Moss 3, I was coming from Barton Mining and I got there at the intersection and there was about, I'd say 75 pickets there and they all was throwing rocks at us.
 Q And, did they hit you?
 A Yes, they busted my windshield and the side window and dents in the truck.

* * * *

IN THE CIRCUIT COURT
FOR RUSSELL COUNTY, VIRGINIA

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs
vs

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,
Defendants

HEARING ON SEVENTH RULE TO SHOW CAUSE

Arguments and Rulings on Motion
for Continuance on Picket Site Issue

Arguments and Rulings on Motion to
Extend/Dissolve Injunction

September 19, 1989 (Second Day)
Lebanon, Virginia

APPEARANCES:

For the Plaintiffs:

STEPHEN M. HODGES, ESQUIRE
WADE W. MASSIE, ESQUIRE
PENN, STUART, ESKRIDGE AND JONES
The Virginia House
208 East Main Street
(P.O. Box 2288)
Abingdon, Virginia 24210-2288

KARL KINDIG, ESQUIRE
THE PITTSSTON COMPANY
Route 19
(P.O. Box 4000)
Lebanon, Virginia 24266-4000

* * * *

ODOM—DIRECT

[—] Q Have you heard Mr. Roberts make any public pronouncements on the media about this event?

A [No response.]

Q Have you seen him on TV?

A Yes, I have.

Q Have you heard him say anything about injunctions in Courts with respect to the current events out at the plant?

A What I have seen was on a video copy of the 6:00 p.m. news when I got home last night, and I watched it. I didn't see it as the news was live.

Q Can you remember generally what he had to say . . . what Mr. Roberts had to say about this event, about—

MR. HAVILAND: Excuse me. We object to the hearsay and the statement that question seeks.

MR. HODGES: Your Honor, it will be an admission.

THE COURT: I take it is supposed to be under the admission exception to the hearsay rule.

[—] Overruled.

MR. HAVILAND: It is double hearsay. It is in a media report. That is hearsay itself.

—THE COURT: I understood that he heard the statement made by Mr. Roberts. Let me just clarify this.

Mr. Odom, what exactly did you see? Did you hear somebody talking about what Mr. Roberts said, or did you see Mr. Roberts purportedly making these statements on video?

THE WITNESS: He was on camera on the TV station, and they had it on their 6:00 news, and I video tape the news every evening and I watched it when I got home.

THE COURT: Was this him talking?

THE WITNESS: It was Mr. Roberts talking.

THE COURT: All right, overruled.

Q Can you tell the Court the substance of what you remember him saying about the Court's injunctions with regard to the current situation at Moss No. 3?

A Yes, sir. It was that, We are not going to adhere to the Courts and we are not going to stop.

MR. HODGES: That's all. Thank you.

* * * *

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, VIRGINIA

CLINCHFIELD COAL COMPANY, INC.

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA

APPEARANCES:

STEPHEN M. HODGES, Esq., Abingdon, Virginia
WADE W. MASSIE, Esq., Abingdon, Virginia
KARL K. KENDIG, Esq., Lebanon, Virginia
Counsel for the Plaintiff

JAMES M. HAVILAND, Esq., Charleston,
West Virginia

WILLIAM D. SHULTS, Esq., Washington, D.C.
Counsel for the Defendant

HEARING OF OCTOBER 4TH, 1989

* * * *

RIFE—REROSS

[184] Q Mr. Rife, on July the 5th, isn't it true that you reported two individuals hit your truck with a rock, [185] two people? Do you recall doing that?

A It was when they knocked the windshield out of it.
Q This is the one on July the 5th?

A I don't know the exact date but I know I was going up 600 right below what they call the houses, where the houses are real narrow, and two hands come up over the back of a pickup and knocked my windshield out.

Q Two hands?

A Yeah. They was hunkered down behind a pickup so they just throwed rocks and knocked my windshield out as I was passing.

Q And those were the only two hands you saw throwing a rock at you, isn't that right?

A Yeah.

* * * *

[186] Q On July the 13th, you testified about getting a dent in your door and you said there were fifty to seventy-five people. Now, you're not testifying to the Court, are you, that all fifty to seventy-five of those people were throwing rocks at your truck?

A No.

Q Did you see the man that did it?

A No, I didn't.

* * * *

Q Okay. How many of those fifty to seventy-five people were throwing rocks at you?

A I don't know. Only two hit the truck, one on the door and one on the cab.

Q And you went ahead and made the run and I guess you hauled the rest of the day?

A Yeah.

[187] Q Would the same be true for the time on August the 9th when you got hit by—Well, let me start over. When your mirror got hit, how many people were alongside the road there?

A I'd say forty or fifty because, you know, it was a narrow place. They was scattered up and down the road.

Q Now, let me ask you, what kind of distance did you come across that number of people, seventy-five or whatever you said? How were they strung out?

A Well, it was narrow, the road was, you know. I mean, there wasn't no real wide places so they was, you know, kind of scattered out up and down the edge of the road.

Q And, again, you're not saying that every one of those people or even the majority of those people were throwing rocks at you?

A No, there wasn't that many. I'd say three or four or five rocks hit the truck and the mirror and the glass on the driver's side.

Q To your left?

A Yeah.

Q Now, the last day you testified about on August the 14th, I've got here that you said there were forty people and about ninety percent of them were dressed in [188] camouflage. How many rocks were thrown at you that day?

A I don't know.

Q How many hit you?

A Two, I think.

* * * *

Q Mr. Rife, did you recognize any of these people?

A No, I didn't.

Q You didn't know any of them?

A No.

Q Did you ever look at some photographs and try to identify some people?

A No, sir.

Q And you're still hauling coal now?

A Yes, sir.

* * * *

RIFE—REDIRECT

[189] Q Mr. Rife, on this occasion when you saw the two hands throwing rocks from behind a pickup truck, were there some other people in the area along with those other people?

A Yes, there were.

Q And how were the other people dressed?

A Camouflage.

* * * *

Q Mr. Rife, those other people that were in the area weren't throwing rocks at you, were they?

A No.

* * * *

GALT—DIRECT

[247] Q Mr. Galt, were you also on duty on August 9th in the general area of the scales?

A Yes, sir.

Q Were you attempting to ~~phot~~ graph something at that time?

A Yes, sir.

Q Did you observe any union officials there on that day?

[248] A Yes, sir.

Q Who did you see there?

A I saw Marty Hudson there on the hill overlooking the scales on the North side.

Q Did you attempt to photograph him?

A I attempted to photograph him and then we moved in for a different angle shot.

Q And what happened when you moved for a different shot?

A We didn't move directly at his vehicle. We moved laterally to it to get a front angle shot on the vehicle to try to get through the windshield and the license plate. And as we got close to the road, we were still on Clinchfield property. When we got about ten yards from the road where 600 and 615 intersect. Marty was in the driver's seat, put the vehicle, I guess, in drive and came down the hill and stopped the vehicle right there on the edge of the road directly in front of us, jumped out of the vehicle. There was myself and cameraman, Jeff Trait with me. He ran directly at Jeff Trait. While he was running, he was yelling, "You want my picture, you want my picture?" And he stopped right in front of Jeff, maybe a foot away from his face, and said, "I'll kick your fucking ass."

* * * *

RULE TO SHOW CAUSE

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of the County of Russell, Greeting:

WE COMMAND YOU, That you summon

International Union, United Mine
Workers of America
c/o District 28 Headquarters
Castlewood, Virginia

to appear before the Judge of our Circuit Court for the County of Russell, at the Courthouse thereof, on the 7th and 8th days of December, 1989, at 9:00 o'clock a.m., to SHOW CAUSE, if any it can, why it should not be held in civil contempt of this Court and to liquidate certain previously announced civil penalties for its failure to abide by the Orders of this Court, entered April 13, 1989, April 21, 1989, May 18, 1989, June 7, 1989, and July 27, 1989, in that it has violated the terms of said Orders, as follows:

198. On June 6, 1989, the defendant violated the orders as follows:

a 1. At approximate 1:30 a.m. pickets used tire puncturing devices, threw rocks and shot at a vehicle driven by William Adams at the entrance to "Old Ten C" Mine between Nora and Coeburn.

a 2. At approximately 1:30 a.m., pickets threw rocks and shot at a vehicle occupied by Steve Wright at the entrance to the "Old Ten C" Mine between Nora and Coeburn.

199. On August 2, 1989, at approximately 1:00 a.m. pickets threw rocks at a vehicle operated by William Adams on Route 658 south of Coeburn.

200. On September 1, 1989, about 5:00 p.m., pickets threw rocks at a vehicle driven by Tony R. Casebolt¹, approximately one mile outside Clinchco on Route 83.

201. On September 12, 1989, between 12:00 noon and 3:00 p.m., pickets slashed the tires on Walt Crickmer's vehicle at a parking lot in Abingdon.

202. On October 7, 1989, about 6:00 a.m., pickets threw rocks at a vehicle driven by Elmer Bostic at the entrance to SB #2.

203. On October 9, 1989, the defendant violated the Orders as follows:

a 1. At approximately 6:00 a.m. pickets threw rocks at a vehicle driven by Mike Davis at the entrance to the Tiller mine;

a 2. At approximately 6:00 a.m. pickets threw rocks at a vehicle driven by Charlie Bostic at the entrance to the Tiller mine.

204. On October 10, 1989, pickets abducted and beat James Robert Bise and vandalized his vehicle outside Coeburn.

205. On October 11, 1989, pickets threw rocks at a vehicle driven by Dwayne Mullins at the entrance to the Triple C mine road.

206. On October 13, 1989, the defendant violated the Orders as follows:

a 1. At approximately 8:40 a.m., pickets threw rocks at a vehicle driven by Floyd James near the picket shack at SB #2.

a 2. At approximately 4:10 p.m. pickets threatened William Adams at his home in Tacoma.

¹All of the victims identified herein are either employees of plaintiffs, employees of plaintiffs' contractors, family members of plaintiffs' employees or family members of employees of plaintiffs' contractors, persons performing work or services for plaintiffs or operating vehicles owned or operated by plaintiffs or others performing work or services for plaintiffs.

207. On October 18, 1989, the defendant violated the Orders as follows:

a 1. At approximately 2:10 a.m. pickets threw rocks and shot at a vehicle operated by Earl Robinson on Route 63 across from the McClure No. 1 picket shack.

a 2. At approximately 2:40 a.m. pickets threw rocks at a vehicle operated by Tracy Wood at the main picket shack at McClure No. 1.

a 3. At approximately 1:30 p.m. pickets and union leaders threatened Ed Rudder on Route 652 approximately 2 miles north of Ervington High School.

208. On the night of October 19-20, 1989, the defendant violated the Orders as follows:

a 1. On October 19, 1989, about 11:50 p.m., pickets threw rocks and shot objects at Carlene Gibson between Fremont and the Four-Way;

a 2. On October 20, 1989, about 12:15 a.m., pickets followed Larry Fleming and threw rocks or shot objects at him between Fremont and the Four-Way.

b. Having or permitting roving or moving pickets.

209. On October 20, 1989, the defendant violated the Orders as follows:

a 1. At approximately 1:00 p.m. pickets struck a vehicle driven by Johnny Conaway with a club on Route 652, .6 mile south of Route 645.

a 2. At approximately 9:15 p.m. pickets threw rocks, bottles and nails at persons performing services for Sea "B" Mining Company at Sea "B" Mine entrance.

210. On October 21, 1989, about 11:00 p.m., pickets threatened Brian David Barnette at the Pop-in-Mart in Norton.

211. On October 24, 1989, the defendant violated the Orders as follows:

a 1. About 7:30 p.m., pickets threw a nailboard in front of Cloudy Fuller and threw rocks at his vehicle on Rt. 652 approximately 3 miles from Nora.

a 2. About 11:00 a.m., pickets placed jackrocks in front of a vehicle driven by Joseph D. Hamilton, Jr. on Rt. 63 between Strata and Martintown.

a 3. About 11:50 p.m., pickets threw rocks at a vehicle driven by Ronnie Conaway near the Triple C picket shack.

a 4. About 11:55 p.m., pickets threw rocks and shot at a vehicle driven by Larry Fleming near the Triple C picket shack.

b. Having or permitting roving or moving pickets.

212. On October 25, 1989, the defendant violated the Orders as follows:

a 1. About 11:30 a.m., pickets threw jackrocks in front of a vehicle driven by Burton Martin on Rt. 656 and later brandished weapons and threatened him when he stopped for a flat.

a 2. About 11:30 a.m., pickets threw jackrocks in front of a vehicle driven by Chris Beverly on Rt. 656 and later brandished weapons and threatened him when he stopped for a flat.

a 3. About 2:10 p.m., pickets threw jackrocks in front of a vehicle driven by Eddie Darren Kiser on Rt. 652, approximately one mile east of Rt. 651.

a 4. About 2:15 p.m., pickets threw gravels at a vehicle driven by Larry Fleming and threatened him.

b. Having or permitting moving or roving pickets.

213. On October 26, 1989, the defendant violated the Orders as follows:

a 1. About 11:00 a.m., pickets threw rocks at a vehicle driven by a contractor's employee at the picket shack at SB #2.

a 2. About 1:15 p.m., pickets threw jackrocks in front of a vehicle driven by Wayne Mullins approximately one-half mile above the 651 turn-off toward Triple C.

b. Having or permitting roving or moving pickets.

214. On October 28, 1989, at approximately 1:30 a.m. pickets threw rocks and shot at a vehicle driven by Clayton Stacy on Route 83 approximately 2 miles east of Fremont.

215. On October 30, 1989, the defendant violated the Orders as follows:

a 1. Pickets threw rocks at a vehicle occupied by Brian Bourland at the picket shack for Roaring Fork Mine.

a 2. Pickets threw rocks at a vehicle operated by Leon Beaver on Route 652 at Open Fork Inn at approximately 7:15 a.m.

a 3. Pickets threw jackrocks at a vehicle operated by McNeil Phillips at the main picket shack at McClure No. 1 Mine at approximately 11:00 p.m.

a 4. A picket captain, Robert Dixon, was caught with jackrocks on Route 652 in Dickenson County.

b. Having or permitting roving or moving pickets.

216. On October 31, 1989, the defendants violated the Orders as follows:

a 1. About 8:25-10:20 a.m., pickets chased Danny Mann and caught and beat him in Dungannon.

a 2. About 12:30 p.m., pickets threw jackrocks in front of a vehicle driven by Dewayne Mullins at the Community Center on Rt. 63.

a 3. About 10:00 a.m., pickets threw jackrocks in front of a vehicle driven by Tom Copely, Jr. at the picket shack to the Smith Gap mine.

a 4. About 3:00 p.m. pickets threw jackrocks in front of a vehicle driven by Tom Copley, Jr. at the picket shack at Smith Gap Mine.

a 5. About 1:50 p.m. pickets threw or placed jackrocks in front of a vehicle driven by Luther Turner at the picket shack at Smith Gap Mine.

a 6. About 10:30 a.m. pickets threw rocks or other objects at a vehicle operated by Mike England on Route 636 near the union hall.

a 7. About 10:40 a.m. pickets threw rocks or other objects at a vehicle operated by Jeffrey McCoy on Route 636 near the union hall.

b. Having or permitting roving or moving pickets.

217. On November 1, 1989, the defendant violated the Orders as follows:

a 1. About 8:15 a.m., pickets threw jackrocks in front of a vehicle driven by Joseph D. Hamilton, Jr. on Rt. 624 in the Camp Creek section of Dickenson County.

a 2. About 9:15 a.m. pickets threw or placed jackrocks under a vehicle operated by Joey Baldwin at the picket shack at Smith Gap Mine.

a 3. About 12:20 p.m. pickets threw or placed "dragon's teeth" under a vehicle operated by Junius Sturgill at the picket shack of Smith Gap Mine.

b. Having or permitting roving or moving pickets.

218. On November 2, 1989, at about 11:10 a.m. pickets threw or placed "dragon's teeth" under a vehicle operated by Mark Spradlin at the picket shack at Smith Gap Mine.

219. On November 7, 1989, the defendant violated the Orders as follows:

a 1. About 8:35 a.m. pickets threw or placed jackrocks under a vehicle operated by Tom Copley, Jr. at the picket shack at Smith Gap Mine.

a 2. About 10:00 a.m. pickets threw or placed "dragon's teeth" under a vehicle operated by Joey Baldwin at the picket shack at Smith Gap Mine.

a 3. About 10:50 a.m. pickets threw or placed "dragon's teeth" under a vehicle operated by Tom Copley, Jr. at the picket shack at Smith Gap Mine.

220. On November 8, 1989, at approximately 12:45 a.m. pickets threw or placed jackrocks under a vehicle operated by Joey Baldwin at the picket shack of Smith Gap Mine.

221. On November 9, 1989, defendants violated the Orders as follows:

a 1. At about 3:45 p.m. pickets threw or placed jackrocks under a vehicle operated by Tom Copley, Jr. at the picket shack at Smith Gap Mine.

a 2. At about 2:50 p.m. pickets threw or placed jackrocks under a vehicle operated by Joey Baldwin at the picket shack at Smith Gap Mine.

b. Having or permitting moving or roving pickets.

222. On November 14, 1989, at approximately 12:00 noon pickets threw or placed jackrocks under a vehicle operated by Charles Willis at the picket site at Smith Gap Strip Mine.

223. The defendant, International Union, has violated the Orders of this Court on all days since October 25, 1989, by virtue of the following:

a. Failure to use all lawful means readily available to insure compliance with the Orders; and

b. Failure to report to the Court in writing the date and nature of violations of the Orders.

And have then there this writ.

WITNESS, Donald A. McGlothlin, Jr., Judge of our said Court, at the Courthouse, this 17th day of November, 1989, and in the 213th year of the Commonwealth.

/s/ Donald A. McGlothlin, Jr.
Judge

VIRGINIA**IN THE CIRCUIT COURT OF RUSSELL COUNTY**

CLINCHFIELD COAL COMPANY, et al.,
Plaintiffs,
 vs.

**INTERNATIONAL UNION, UNITED MINE WORKERS
 OF AMERICA, et al.,**
Defendants.

Tuesday, October 17, 1989
 Clintwood, Virginia

The above-entitled matter came on to be heard before the Honorable Donald A. McGlothlin, Jr., Judge of the Circuit Court of Russell County, at the Courthouse, Clintwood, Virginia, beginning at 3:30 p.m., when there were present on behalf of the respective parties:

For the Plaintiffs:

STEPHEN M. HODGES, ESQUIRE
WADE W. MASSIE, ESQUIRE
KARL K. KINDIG, ESQUIRE

For the Defendants:

WILLIAM O. SHULTS, ESQUIRE
JAMES M. HAVILAND, ESQUIRE

* * * *

[19] The Court has heard no evidence from the Plaintiffs concerning how much money was lost in the operation of its business as a result of allegations of misconduct or any type of conduct around its facilities.

The only exception to that might be the question about how many tires blown out and replaced, how many windshields were blown out and replaced, some of that was taken several months ago in earlier hearings; some of that evidence was introduced on cross-examination by the Defendants.

The Court has not considered any issue or element of the compensation to the Plaintiffs in any of the prospective fines. The sole purpose of the fines is to secure, on behalf of the Defendants and its agents, compliance with the law and compliance with the Court's Orders.

So, that in the Court's mind is not an issue in this eighth Rule to Show Cause. Since compensation of compensatory fines are not being posed, the Court finds that all of the request for documentation about alleged loss of income or expenses, which would normally have been incurred during a period of September 17 through the 20, is irrelevant in this proceeding.

* * * *

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, VIRGINIA

CLINCHFIELD COAL COMPANY

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA

APPEARANCES:

STEPHEN M. HODGES, Esq., Abingdon, Virginia

WADE W. MASSIE, Esq., Abingdon, Virginia

KARL K. KENDIG, Esq., Lebanon, Virginia

Counsel for the Plaintiff

JAMES M. HAVILAND, Esq., Charleston, West Virginia

WILLIAM D. SHULTS, Esq., Washington, D. C.

JAMES J. VERGARA, Esq., Hopewell, Virginia

MICHAEL J. PASSINO, Esq., Nashville, Tennessee

Counsel for the Defendant

HEARING OF OCTOBER 23RD, 1989—Part II

* * * *

The Court is convinced, as I've stated numerous times, that this is a civil contempt proceeding. The only way that any fines or any penalties can be assessed is for the defendants to fail to comply with the Court's injunctive orders and the laws of the Commonwealth of Virginia as are stated or as are outlined in the order. This is not punitive. It is compulsory. It is designed to compel compliance and therefore it is not criminal in nature but civil. The Court does not feel that the law that is stated in the U. S. versus Twentieth Century Fox case is appli-

cable to this case at hand. Therefore, the demand for a jury trial will be denied. Any other preliminary matters, gentlemen?

* * * *

JONES—DIRECT

[50] Q Do you know who Cecil Roberts is?

A Yes.

Q The vice-president of the International Union?

A Yes, sir.

Q Did you see any other people you recognized as leaders of the union?

A Yes, sir, I did.

Q Who else did you see?

A Well, I didn't see anybody at that time other than Cecil Roberts there giving a speech.

Q What was Mr. Roberts saying?

A Mr. Roberts told the people that a few minutes ago or a little while ago ninety-seven people had gone into the plant. They were going to take it and hold it and that he wanted it peaceful but he wanted everybody to stay because they were going to stay in there as long as it took.

Q Now, did Mr. Roberts have any kind of [51] headquarters there that you saw?

A Yes, sir, he had a trailer type situation right in front to the right of the main gate of Moss 3 with communications.

Q When you say communications, what kind of communications?

A Well, he had a portable radio that he carried with him and he made several phone calls from inside the place where he was—We never did go in there but he went in to call his attorneys and came back out at one point during the takeover.

Q This was at some later time, I take it?

A Yes, sir.

Q Did you observe whether the leaders appeared to be in control of the groups of people there?

A Yes, sir.

* * * *

[61] Q Did you have any discussion with the people inside the plant about leaving?

A Yes, sir, I had discussions. I spoke up and asked them—I told them that they were trespassing and asked them to leave.

Q What was the response?

A No.

Q Who gave that response?

A A bunch of them. Mr. Roberts said that they weren't going to leave and Mr. Blaylock said that they weren't going to leave.

* * * *

DEAHL—DIRECT

[72] Q Did you see Mr. Cecil Roberts as you were going in the office?

A He come a little later, him and two other gentlemen walked up the same route that the other people had come. Yeah, I saw him.

Q What did Mr. Roberts do?

A He had a speaker that you talk in and he come around the thickener between the office and the plant. It probably wasn't a hundred feet away and he spoke to the men on the roof and told them they did a great job and to keep it up and to expect some union officials, some State Police and company officials to come in. They want to come in the plant, look it over, and then they'll leave. And he told them then if you see the State Police coming by themselves prepare yourselves.

* * * *

SANDERS—DIRECT

[86] A Well, the entrance was blocked until way up in the night, after midnight. Sometime after midnight, some of the people that were blocking the entrance proceeded to lay down. Some moved a few feet from the main entrance and land down on the sides of the road and so forth. The crowd was there but they weren't in the main entrance. Some were laying blocking the main entrance but they got sort of away from it a few feet. That happened, dwindled about 2:00 a.m. that morning. I went to sleep about 2:30 in the truck, got up at 4:30 and about somewhere around 5:00 a.m., they started gathering again, the people who had left the main entrance to the side sleeping started gathering back into the main entrance.

Q Do you think it would have been possible for the workers at that plant to get in and go to work that night because of the crowds out on the road, forgetting for a minute the people who were inside the plant?

A No, sir. Every time myself or anyone in management or anyone who did not have permission would move towards the main entrance there would be crowds gather to the main entrance and block it.

Q And when you say did not have permission, who was giving that permission?

A Cecil Roberts.

[87] Q Is he the vice president of the United Mine Workers?

A Yes, sir.

Q Now, on Monday, September 18th, did you see any union leaders out among the crowd gathered in front of the plant?

A Yes, sir.

Q Who did you see there?

A I saw Cecil Roberts, vice president of the UMWA. I saw John Cox. I saw Jackie Stump, president of District 28. That was at the main entrance on Moss 3.

* * * *

[91] A Well, first of all, I stated who I was and what my job was and that they were trespassing and they were subject to arrest if they continued to trespass and also [92] that they were in violation of the State injunction issued by the Circuit Court of Russell County and also the U.S. District Court injunction.

Q Did you have any response to your statement?

A Yes. There was a man behind me just a few feet, Daniel Jessee, that said, "We're stockholders." And then Cecil Roberts gave a little talk and he said that—He said several things. First of all, he said, "I want the people here to know, the men here to know, that this only constitutes a misdemeanor." And I understood myself that he meant their overtaking the plant and being there illegally constituted a misdemeanor. He also said that he wanted the members of management that were there and the State Troopers to look and make sure that the operation had not been altered or they had not done anything to damage the operation since they took it over.

Q Did you ask permission to reread the memorandum or the notice a second time?

A I did. I asked their permission.

Q And was their permission granted?

A No. Cecil said there was no need, that everyone was there and everyone heard it and understood it.

* * * *

[96] Q Will you tell the Court just in a general way what conditions you found in the plant when you went back in?

A I sure would. I went into the area outside the main panel. And outside the main panel front entrance, there as a pair undershorts laying in the floor. There was paper, trash, all in the main panel. There was tissue paper, rolls of tissue paper on the main panel floor. There was food bags, which is commonly called C ration bags, they were laying all over the main panel floor and the power center which is back behind the main panel. There was barricades of doors. The front main entrance

of the main panel was barricaded with a steel wheel with a stem and a rod on the inside. The back door going out of the main power center to the area which we call out frost [97] cell floor was chained. The stairwell going up from the third floor level to this fourth floor area behind the main power center was barricaded with scrap metal, with steel grating, anything heavy they could get their hands on and barricade it.

Q There was three particular areas that I could not stand the smell. I couldn't stand around very long because of the smell of urine. I saw three water hoses that had been looped over some piping and they had put some shower heads on the end of the water hose and used them for a shower. I saw some makeshift hammocks that had been roped to some steel structure on the ceiling. They just left them there pretty well up.

Q Mr. Sanders, did you see any people inside the plant that you know to be leaders of the United Mine Workers on any of your visits?

A Yes.

Q Who were those people?

A Of course, Cecil Roberts led me in each time on the three occasions I went in. Also, I was introduced to Eddie Burke who was introduced as a UMWA strike coordinator and he self proclaimed to me that he was leading the men inside the plant. And he was there inside the plant. Also, another UMWA International member [98] introduced himself as Ricky Blaylock and I saw him on each occasion.

* * * *

Q All right, sir. Mr. Sanders, was there ever a time in this three day period that this occupation occurred when the main entrance and the raw coal pile entrance were not blocked with people in camouflage?

A Not that I'm aware of.

* * * *

CRICKMER—DIRECT

[116] A Tuesday evening, the crowd was just wild. I mean, it was—I returned back Tuesday evening late and it was building to a point that it was almost scary. I mean, fifteen hundred people screaming and hollering holding the main entrance.

Q Were you around during the day on Wednesday?

A Yes.

Q Was there a crowd there on Wednesday?

A Building higher and higher all day long.

Q Were there any speeches made?

A Yes.

Q Did you hear Cecil address the crowd and tell them whether they were going to leave or not?

A Yes.

Q What did he say?

A He said they wasn't going to leave. He didn't have to obey the Court orders. He said that he didn't have to go to Court. He said there's two thousand people here and more coming and we're all going to get arrested first before the people in the plant get arrested. That was the gist of it and it went on for sometime. Other people made speeches. It was pretty wild.

Q Now, Mr. Crickmer, let me show you a couple of pictures here, Nos. 34 through 41, and ask you if these [117] depict scenes during the Monday, Tuesday or Wednesday of the crowds outside the plant, if you saw those crowds?

A Yeah.

Q Okay. You've just identified No. 34. How about 35?

A I was there.

Q All right. Does this show any union leaders in this picture, 35?

A It shows Keith Leonard, Jackie and—

Q Jackie Stump?

A Jackie Stump, John Cox, Cecil Roberts.

Q All right. Go on to the next one, sir. What does it show?

A John Cox with the bullhorn and the entrance to the plant.

Q Is that 36?

A No. 36.

Q No. 37, what does it show?

A It shows Cecil and various other union members standing around the entrance to the plant.

Q All right. What does 38 show?

A It shows a large contingency there blocking the entrance, blocking the main entrance to the plant.

* * * *

JOHNSON—DIRECT

[133] Q About what time did that speech start?

A That was approximately 7:00 o'clock.

Q Did you make some notes of Mr. Roberts' speech?

A Yes, sir, I did. My supervisor asked me to observe and make notes. I did make notes of several things that Mr. Roberts had said.

Q What did he say?

A Well, first off, he said that when Mr. Mike Odum and Paul Douglas died that he would have to hire pall-bearers because there wouldn't be anybody to bury them. He said that he wouldn't go to jail because he said McGlothlin didn't have guts enough to put him in jail.

Q Is that Judge McGlothlin?

A I take it to be that. He said McGlothlin. I take it to be that.

* * * *

RANDOLPH—DIRECT

* * * *

[—] down to Hanging Rock Clinic, down in that area down there. There was two men walking in camouflage, walking on the left-hand side of the road. They had

flashlights and they flashed their flashlights in my eyes as I came by there. There wasn't anything said or anything like that. I looked over on the right there. There was two vehicles setting there with people in those vehicles. They also flashed their lights on me as I came by. I proceeded on into St. Paul and when I got to Meade's Muffler Shop down there just before you get into St. Paul, there was one vehicle setting there and that vehicle had two occupants in it. Of course, I couldn't recognize anybody in the vehicles but there were two occupants in there. They also flashed their lights. And I knew, you know, something wasn't right because, you know, they were flashing their lights on my vehicle and off and I couldn't understand, you know, what was happening. I I got through St. Paul and I got to Piggly Wiggly, there past the Piggly Wiggly parking lot, the same thing happened. There were two vehicles setting there. They flashed their lights. As I got to the red light where you turn onto Highway 58, there was a small white vehicle came up on me at a high rate of speed and as I started up the mountain there from St. Paul—

[—] Q. You turned towards Castlewood?

A I turned up towards Castlewood, that's right. And when I went up the mountain there, this small vehicle got close on my rear bumper and I could tell it was white in color through my rear view mirror. Of course, I couldn't tell what make and model it was but it was a small, white car. And he stayed right against my back bumper as I went up the mountain. When I got up to the top of the mountain up there, there's a small family associates, a doctor's office setting on the right there. There was two pickup trucks setting there. One of them was a Ford. It was dark blue or black. And the other one was a Ford, also. It was a brown and a tan.

Q Go ahead.

A When I got up there at the top of the mountain, the guy that was behind me in a small white vehicle, he flashed his lights off and on and those two vehicles setting

there, they flashed their lights off and on. When he flashed his lights, he dropped back behind me and the two trucks came out on the highway behind me. I went on, proceeded, you know, on down to about a half a mile below there to a little place called Stop and Shop, a little grocery there where I normally stop every night there and get a cold drink. And I pulled up in the parking lot at [—] this grocery and when I pulled up, I circled my car around and just put my car in neutral, pulled my emergency brake up and left the lights on. I started around the front of my car and when I started around the front of my car, I saw this pickup truck coming in the upper entrance to the store and the other one came down below him and came in the lower entrance to the store. And the small white car, it pulled up behind the dark Ford pickup at the upper entrance.

Q What time was this?

A This was approximately 1:00 o'clock in the morning.

Q All right, sir.

A And at that time, when I saw those two vehicles coming in the parking lot, one coming in the upper part and the other in lower part, I proceeded back around my car and I had a .30 caliber hunting rifle in the car. And I picked up the hunting rifle and injected a clip in the lower part of the hunting rifle.

Q Was that store open or closed at that time?

A The door was open.

Q The store?

A The store was closed. The store was closed.

Q Was anybody else in the parking lot but you at [—] that time?

A No, sir, there wasn't anybody else in the parking lot but me at the time.

Q The soft drink that you were going to get—

A Pardon?

Q Was it a soft drink that you get out of the machine there?

A Yes, sir. They have soft drink machines there and I stop there every night and get one on the way home. As I said, when I saw those vehicles pulling in both entrances to the store there, I went back, proceeded around my car. The door was open. My lights were on in my car. The car was setting there in neutral and the emergency brake was pulled and the car was running. I reached inside the car and I had a .30 caliber hunting rifle laying in the seat. I got the hunting rifle out, injected a clip into the hunting rifle, stood by the door. Two guys got out of the pickup truck on the lower side down there, the tan and brown one. They were dressed in camouflage. I looked up at the upper end of the parking lot. Two guys were getting out of the dark colored Ford pickup and they were dressed in camouflage. The two on the lower end didn't have anything in their hand. The two guys in the upper end of the parking lot, each one of them [—] had a baseball bat. And I asked the people twice, I said, "What do you people want?" And nothing was said. I glanced at the front of the pickups and the tags were covered with something. I don't know what it was but the tags were covered with some sort of tags on either one of the vehicles. When I asked them the second time what they wanted, I stepped out clear of the door of the car with my rifle. And when they saw the rifle, they turned around and proceeded back to their truck immediately. There wasn't anything said. They didn't say anything when I asked them twice what did they want. When they turned around to go back to the vehicle, I got back in my vehicle and went across the median. They had the two entrances blocked. I went across the median into —There's a drive-in restaurant there called Ma's and Pa's. I went across the median, into the restaurant, back out on the highway.

Q Where does Ma and Pa's sit in relation to this store?

A Well, it sets to the right of this Stop and Shop.

Q Down the road towards Castlewood?

A That's right, on down towards Castlewood,. And I went across the median into their parking lot and out onto [—] the main highway. I looked back in my rear view mirror when I pulled out on the highway and they were coming behind me. They followed me, I'd say, a mile or a mile and a half on down 58. I was going towards Hansonville. At that time, there was three State Police cars coming up westbound going towards St. Paul in the other lanes. When they saw those State Police cars, why, I looked back in my rear view mirror and they started braking and turning off. And I proceeded on to my home.

* * * *

MEADE—DIRECT

[—] A I was loading from Yowling Branch coming down Route 600 loaded and it was between the first and second set of railroad tracks about two miles, a mile and a half or two miles, North of the 621 and 600 intersection, there was fifteen or twenty picketers on my left-hand side of the road as I come down. They throwed rocks. I was hit three times. I was hit on the driver's side windshield, the passenger side mirror and the driver's door. And I got two jackrocks on that occasion.

Q You called them pickets. Why do you call them pickets?

A They were dressed in camouflage and there was one of the boys that was with them that I knew that was charged with throwing a jackrock.

Q How did you know him?

[—] A I know him. He lives in my area.

Q Is he a member of the United Mine Workers?

A Yes, he is.

* * * *

MANN—DIRECT

[210] BY MR. HODGES:

Q Are you Danny Mann?

A Yes, sir.

Q Do you work for Clinchfield Coal Company?

A Yes, I do.

Q How long have you worked for them, sir?

A Fifteen years.

Q And did you come under some sort of rock attack on September 10th of this year?

A Yes, sir.

Q Were you attempting to enter the McClure No. 1 mine complex at that time?

A Yes, I was. I was crossing the picket line.

Q About what time of the day or night did this occur?

A About 11:25 p.m.

Q All right. Describe to the Court what happened as you approached the intersection at Route 63?

[211] A Well, as I turned in, there was two groups of pickets, about three in each group, and as I made the turn, they was one boy standing in a blue shirt and light colored shorts, he threw a rock at my car.

Q Did you actually see him throw the rock?

A Yes, I did.

Q Do you know the man?

A Yes, I do.

Q What's his name?

A Barry Mark Hall.

Q And is he an employee of Clinchfield out on strike?

A Yes, sir.

Q Is he a member of the United Mine Workers?

A Yes, sir.

Q Now, you said there were several people in the group. How were those other than Mark Hall dressed?

A They were all dressed in camouflage.

Q How far did this event happen from the picket shack at 773 and 63?

A It was right at the picket shack.

* * * *

JOINTER—DIRECT

[212] A A few minutes later, the other guy that was in the truck; there were two individuals in the truck; both of them got out and they stood at the striker's shack talking. I would say about ten or fifteen minutes later, the driver of the vehicle walked to the Port-O-Potty that was outside. It was on the other side of the road from the striker's shack. And as he was walking across the road, we could see him pulling things and throwing them out into the road. He came back a few minutes later. He talked a few more minutes with the people at the striker's shack and got in his truck and drove off. At that point, my partner and I, Security Officer Ringston, we walked down to the front of the road and at that time, we picked [213] up about forty or fifty roofing nails that had been laid across the road from where this guy had walked.

Q And how far did this happen from the picket shack at Smith Gap strip mine?

A The roofing nails were all across the road almost directly in front of the picket shack, maybe about ten feet away.

* * * *

IN THE CIRCUIT COURT
FOR RUSSELL COUNTY, VIRGINIA

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, et al.,
Plaintiffs
vs.

**INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, et al.,**
Defendants

CONTEMPT HEARING
[Second Day]

October 24, 1989
Lebanon, Virginia

APPEARANCES:

For the Plaintiffs:

STEPHEN M. HODGES, ESQUIRE
WADE W. MASSIE, ESQUIRE
Penn, Stuart, Eskridge & Jones
208 East Main Street
Abingdon, Virginia 24210

For the Defendants:

WILLIAM O. SHULTS, ESQUIRE
International Union
United Mine Workers of America
900 Fifteenth Street, N.W.
Washington, D.C. 20005

JAMES M. HAVILAND, ESQUIRE
McIntyre, Haviland & Jordan
124 Capitol Street
Charleston, West Virginia 25301

JAMES J. VERGARA, JR., ESQUIRE
Vergara & Associates
100 Main Street Plaza
Hopewell, Virginia 23860

* * * *

I. RASNAKE—DIRECT

- [73] Q What mine were you going to?
 A Double R.
 Q Whereabouts did this happen?
 A About a mile and a half up Wilder up Route 600.
 Q Did you see who did this to you?
 A Just camouflage on the side of the road.
 Q And what happened?
 A Well, I was going up through there. There was some trucks, and there was a rock come flying out of the crowd.
 Q How many people?
 A Probably 100, 150.
 Q Vehicles?
 A I don't know how many vehicles. There was a line all the way up the side of the road.
 Q What damage was done to your truck?
 A Busted the windshield and caved in the door.
 Q On what side?
 A Passenger side. The windshield was on the driver's side, and the passenger side door.
 Q Did you report it at the scales?
 A No, I went on to Double R, loaded, and started back out. And they was on the other side of the mountain, and they rocked us again. And we come back to the scales and reported it.

[74] Q Who is "us"?

A Me and Keith Viers, and there was another truck or two behind me.

Q So you got hit again that same trip?

A Yes, yes.

Q What damage was done the second time?

A They hit the windshield on the passenger side and hit the cab and stuff.

Q How many were in that group?

A There was about 20 or 25 people there.

Q How were they dressed?

A Camouflage.

* * * *

J. RASNAKE—DIRECT

[161] A There was more jackrocks, more rocks throwed. I had already had one tire going down. And when I got to the power plant in Carbo, two more starting going down. And I got right below the power plant where you go out of the N & W terminal there, pulled off on the left and had three flats. And at that time I was surrounded.

Q Let me ask you—why did you pull off?

A Well, the truck wouldn't go any farther.

Q How many flats did you have?

A Three.

Q What happened?

A Well, at that time I got out and started changing the tires. And a guy in a gray Ford pickup pulled up. A couple of minutes later, they was three more vehicles pulled in. About 12 people surrounded me on the road side and in front of my truck and told me I wasn't changing my tires and the truck wasn't going anywhere.

Q Did you try to change your tires?

A Yes, sir.

Q What happened?

A Every time I would get down, they would start moving a little closer to me.

Q Did you have any kind of protection with you?

A Yes, sir, I had a .22 pistol.

[162] Q What did you do with that when you were trying to change the tires?

A Well, I would have to lay it down. And when I would start to put my tire on, they would start moving in. So I just got up and decided I wasn't going to be able to change my tires. We talked and argued 10 or 15 minutes, and I walked around and got one's tag number off the gray Ford pickup which was SRC 495. The police ran it through, and it was tags that belonged to a Bronco.

MR. HAVILAND: Objection, hearsay.

Q How were these people dressed?

THE COURT: Just a moment. I am not sure what the witness is saying. Mr. Rasnake, you said that it belonged to a Bronco. Were you told that, or did you see that?

THE WITNESS: I was told that by the state trooper after he ran it through.

THE COURT: The objection is sustained.

Q. [Continuing] How many vehicles pulled up surrounding you there?

A The gray Ford truck, then another car, and a pickup with a little black bed on it, and then another older model Ford. There was four vehicles.

Q How many people all together?

A About 12. I counted 12.

[163] Q How were they dressed?

A Camouflage.

Q What were they saying to you?

A Just told me I wasn't going to change the tires and the vehicle wasn't going anywhere. So after we argued about 10 or 15 minutes, I told them I was going to call the state police, which at that time I back up, walked out to N & W train station, called the state troopers. They didn't get there till about 3:00 o'clock, 10 after, a.m.

Q How far is this train station?

A A quarter of a mile.

Q Did you leave your vehicle there?

A Yes, sir.

Q Did the state police eventually come?

A The state police came, and they told me when they got up to the terminal that my truck had been turned up on its side and all of the windows broken out of it.

* * * *

KING—DIRECT

[230] Q Did anything unusual happen to you as you were trying to get to your home in the early morning hours of August 22nd of this year?

A Yes, sir.

Q Will you explain to the Court what happened?

A Okay. We was a little bit late getting off from work that night. And I was going home. I made the turn off of 63. And when I made the turn and went across the railroad tracks and started through a little curve, it was six men in camouflage jumped up out of the ditch. One of them had a shotgun and shot through my car, and the rest of them hit me with rocks.

Q And then did you see anyone come and pick them up after this happened?

A Yes, sir.

Q Tell the Court how that occurred.

A Well, when I come to a stop after they hit me and backed up, as I was backing up, they run up the hill, and this truck pulls up this top road and stops. And they all jump in the truck.

Q Now, Mr. King, did this occur on a road that turns off of Route 63 in the Dickenson County area?

A Yes, sir.

Q And had you ever seen any camouflaged dressed people in that area before this incident happened?

[231] A Yes, sir.

Q On about how many other occasions?

A Probably four or five different occasions.

Q You say someone shot at you. Did you hear a gunshot?

A Yes, sir.

Q Could you tell what kind of a firearm it was?

A Yes, it was a shotgun.

Q Did it actually hit yo'ir car?

A Yes, sir.

Q Did other things besides pellets from a shotgun hit your car?

Yes, sir.

Q What were those things?

A Rocks and water balloons.

Q Let me show you Exhibits 82 and 83, which are two pictures, and ask you if you can identify those items.

A Yes, sir.

Q What are they, sir?

A Well, that is where the shotgun went through the door and went through my seat.

Q Is that where you are holding a tape measure?

A Yes, sir.

Q Did it go all the way through the door?

A Yes, sir.

VIRGINIA:

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs
v.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants

Lebanon, Virginia

November 15, 1989

* * * *

GALBREATH—DIRECT

[39] A On Monday morning, October 16, I arrived at the Cleveland Ball Field at approximately 6:25 A.M. There was approximately four vehicles already there in the parking lot, and the lights were on in the building. As the morning went on, groups of vehicles approached the ball field and turned into the ball field. By 7:25 A.M. there was approximately 225 vehicles parked in the Cleveland Ball Field. All of them went into the building. The meeting appeared to begin around 7:05 A.M. They broke up at approximately 7:28 A.M. on that morning, and they immediately went back to their vehicles and departed the ball field.

Upon departure, approximately 164 vehicles came out of the ball field, took a left, and went toward the Carbo intersection up at 615. Approximately 55 vehicles went toward the Cleveland area, and six vehicles remained at the building.

Q How about the 17th?

A On the morning of the 17th, Tuesday morning, I arrived at the ball field at approximately 6:34 A.M. Again, there was approximately six vehicles already in the lot and the lights were on in the building. Total count of vehicles that went in on that particular morning was 156 vehicles. It was raining that morning and all occupants [40] appeared to immediately go right into the building.

The meeting broke up, or they broke up and left the building at approximately 7:25 A.M., and upon departure 129 vehicles went toward the Carbo intersection, again leaving the ball field and taking a left; and 13 vehicles went toward Cleveland, and approximately 17 vehicles stayed right there at the ball field.

* * * *

RATLIFF—CROSS

[110] Q The last incident here on September 12, you had your windshield replaced?

A Yes, sir.

Q That day?

A Yes, sir, that day.

Q How long did it take to get it replaced?

A About an hour and a half, maybe two hours.

Q So you drove another four or five hours that day after that?

A Yes, sir.

Q How much did that windshield cost?

MR. MASSIE: I object to the relevance of this, how much a windshield cost, somebody throwing rocks at a moving vehicle.

MR. HAVILAND: We have been through this before. We think it is relevant and should be in the record as to the size of the fines.

THE COURT: The Court has many, many times said the size of the fines has nothing to do with compensation for damage; it is a prospective fine that is only imposed if there has been proof of violation of the Court's order. The purpose of the [111] fine is to obtain compliance with the Court's order and to force, to try to force basically a financial giant to comply with the Court's order. I will allow you to ask the questions that may have to do with some member—

* * * *

WHITED—DIRECT

[137] A I was talking to them, setting on the back of our car, and I heard some gravel, you know, just sling, and there was three vehicles flyed in there beside the car. And before I really knowed what was going on, people got out of the truck, run around behind our car, come down in front of it. Before I could get in my truck, they done had me and had me bent over in front of a car.

Q How were these people dressed?

A Okay, they had ski masks on and one of them had a camouflage coat on that I seen.

Q Did they say anything to you?

A Yes, the first thing, "Boy, do you work—

MR. HAVILAND: Objection. Hearsay.

THE COURT: Overruled.

A They said, "Boy do you work for Pittston?" And I said, "Yes."

BY MR. MASSIE:

Q What happened?

A Then they bent me over that and took a ball bat to the back of my legs while they beat me with rocks.

Q How many people were there in your estimation?

A Anywhere from eight to 12.

Q How many times were you struck?

[138] A I guess anywhere between 10 or 13 times.

Q What struck your legs?

A A baseball bat.

Q What struck your head?

A Rocks.

Q Did you lose consciousness?

A Yes, I did there for a little while but I am not for sure how long.

Q When you came to, what was there?

A They was gone. I was just laying there in front of my truck.

Q What condition was your truck in?

A It was wrecked. Glass beat out of it and headlights, tail lights, back tires was cut on it, mirrors was beat off of it and stuff.

Q Did you report it to the state police?

A Yes.

Q Let me show you what has been marked as Plaintiffs' Exhibit 77. Can you identify that picture?

A Yes, right there is when they took a picture of the back of my legs.

Q Is that the day after?

A Yes, the very next day after.

* * * *

COLLEY—DIRECT

[174] * * * I looked across the street parallel to my building, and I noticed a little brown Volkswagen sitting there with no tag in front. I noticed that because I have been followed quite a bit in the last few months, and I always see who is around before I feel secure. I thought, "There is no tag on that car." And I saw a lady get out of the car and head to the bathroom. I thought, "Well, I am safe. It is no men in it." I was busy doing my books and all this. I heard—I didn't hear this first. Let me think.

I saw the Blazer pull into the lot at the gas pump. It was on the outside gas pump, and it was headed north. The little car had pulled in at a corner and I did not link anything together until I saw four men jump out of the car, the little Blazer, and start—the profanity, you can't even repeat what was said. It was, "You g—d—scab," and all of this.

I ran to the door and I don't know where this large man came from. I didn't see him get out of the car, [175] but he was in the middle of the parking lot and I saw this black guy attack him from the front. And then these other guys, two more guys attacked him from the rear, from the back. They pulled his shirt off of him. They beat him unmercifully, and they knocked him to the ground. They pulled him backwards and they started kicking him with their boots. They had on boots above the knee, I mean above the ankle, and they started kicking him.

Q How were these people dressed?

A They were all in camouflage. The first guy that attacked was black. The others were white. And one stood—four got out and one stood at the side of the car

about where the gas tanks are, you know, on the side. He was the one that was screaming the profanities.

* * * *

VERNON—DIRECT

[217] * * * that is when I got hit. I got hit on the right rear panel window and back glass of my Jeep.

Q Where did the rocks come from?

A From the picket area, shack area.

Q How many pickets were there?

A Six to eight.

Q Did you know any of the people there.

[218] A I knew one, the one that was looking through the binoculars at me.

Q Who was that?

A That was Daniel McGlothlin, an employee of Seaboard 2 mine.

Q On strike?

A Right.

Q Member of the United Mine Workers?

A Right.

* * * *

BARNETT—DIRECT

[266] Q What happened to you at that time and place, Mr. Barnett?

A Well, I was closing the gate. As I closed the gate about 5:00, around about five picketers came toward the gate. I stepped back from the gate. They started calling me names and stuff like that. As I turned back around to face them, one guy, one of the guys threw some kind of chemicals in my face. I thought it was something like—how can I say—some skunk oil; I would be stinking all day. As a second passed it started burning my face and eyes like I was on fire, something like that. At that time my partner who was with me took me back to the truck and I started putting water on my face, and

it was intensifying the burning. About five minutes later the response team came and started to put water and soda on my face to relieve the pain. They put me in the response vehicle. They were taking me to the hospital. They stopped a state trooper and the state trooper transferred me from the response vehicle into their vehicle and transported me to Humana Hospital.

Q Mr. Barnett, was this your regular duty at the area of the gate of the Sea "B" No. 2 mine?

A Yes, it was.

Q How were these five individuals dressed who [267] approached you?

A In camouflage fatigues.

Q What sort of thing did they say to you before one of them threw chemical in your face?

A They said, "Nigger, you need to go back to Africa." One said, "No, they won't take him back to Africa."

One said, "You stick your head out here and I'll cut your neck off." He had a knife in his hand.

I turned—not facing them—but when I turned back around to face them, that is when the one threw the acid in my face.

Q Is there a picket shack near that gate?

A Yes, there is.

Q About how many feet is the picket shack from the gate that you were trying to open?

A Roughly, say 25.

* * * *

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, VIRGINIA

CLINCHFIELD COAL COMPANY, INC.

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA

APPEARANCES:

STEPHEN M. HODGES, Esq., Abingdon, Virginia
WADE W. MASSIE, Esq., Abingdon, Virginia
Counsel for the Plaintiff

JAMES M. HAVILAND, Esq., Charleston, West Virginia
WILLIAM D. SHULTS, Esq., Washington, D. C.
JAMES J. VERGARA, JR., Esq., Hopewell, Virginia
Counsel for the Defendant

PROCEEDINGS OF HEARING OF DECEMBER 7TH,
1989

* * * *

GIBSON—D!RECT

[31] Q You're Carlene Gibson?

A Yes, sir.

Q Where do you work?

A McClure.

Q For Clinchfield Coal Company?

A Yes, sir.

Q Were you involved in any incident on the night of October 19th of this year on your way home?

A Yes, sir.

* * * *

[32] Q Can you describe what happened to you that evening?

A Yes. It was snowing that evening, well, that day, and the roads was pretty slick and there's a horseshoe curve there. And I had slowed down to go—Well, it swings back right-handed and I had slowed down to go around the curve and there was four guys come up over the guardrail. All four of them had a rock and they threw them at me. And when I seen them, I kind of swerved to the left and it went right through the windshield beside me and the rock landed in the seat beside of me. And I stopped. And when I stopped, there was a fifth one hit me in the front. I heard a shot go off. I don't know whether they was shooting for my radiator or what but it caught in the tube on my push bar.

THE COURT: Caught in the tube of—

WITNESS: On my push bar.

Q Is the push bar a metal device in the front of your vehicle?

A Yes.

* * * *

BEVERLY—DIRECT

* * * *

[64] A I was in my truck. I got back in my truck. Everybody got in their truck except Blackbeard. They caught him out of his truck because he was in front and they were right in front of him. He eased back around and got in his truck. He got on our company radio and tried to get ahold of one of our other men at another job so [65] they could call the State Police. As he was trying to do that, they was around my truck surrounding me and wanted me to come out of my truck. One individual had his hand on my mirror bracket beating on my window. He wanted me to come out. He wanted to whip me.

Q What was he saying to you?

A He said, I want to whip your ass. Come out of that truck. He said, come out right now.

Q Do you know that individual?

A Yes, I do.

Q Who is it?

A Marty Hudson.

Q What happened then?

A He kept beating on my window. He done that for about five minutes, I guess, or something like that. I just sat in my truck and never even looked his way. Finally, he crawled down off the side of my truck and another individual took his hand and wiped all the finger-prints off my mirror bracket. The guy had gloves on. He wiped them off. All right. So they went up to the truck and was keying up on the CB so nobody couldn't get through.

Q What do you mean, keying up on it?

A They was holding the mike down so you couldn't [66] transmit.

Q Who was?

A The individuals in the vehicles, the camouflaged picketers. So we couldn't get ahold of the State Police. So they sat there for four or five minutes and you could hear them on the radio, what are we going to do, we're going to sit right here a little bit, they said. I guess we was there about twenty minutes. They finally got in their vehicles and left.

Q Did you hear any of the other camouflaged people besides Mr. Hudson say anything about whether you were going to continue to haul coal or not?

A There was one older gentleman; he was probably in his early sixties; was talking to the third truck. He was back there talking to him. And as he come back after they all left my truck and was going back to their vehicles, he come by me. He says, you better park these trucks. He said, all it will take is two weeks and we'll get what we want. He said, if you don't park them somebody will be shot.

Q Was Mr. Hudson present at that time?

A Yes.

* * * *

ADAMS—DIRECT

[138] * * * I pulled across and those two cars were going across the tracks and I started across the tracks, looked up and my car and the little car and jeep was there in a line and there's a right-hand turn and a long straight right there. As we went into this turn, I observed the blue and white union sticker up on the jeep and, you know, I thought to myself, I said, well, I wonder what this is or who this is, you know. We just started on up the straight there and right before you get to where you turn into my house, there's a large open field, you know. I guess it's probably fifty or seventy-five yards long. I could see through the back open part of the jeep there, you know, the window cutout thing. I could see the driver looking over and stuff towards the direction of my house. I looked over at my [139] trailer. My wife and the lady that we babysit for were out in the front yard. We approached the house right there at my driveway, a big two story red house. Another little white car came up on me pretty quick. And you have to stop, you know, pretty fast right there to turn in. There's a telephone pole and there's about six or eight mail boxes and another telephone pole and you've got to stop and turn in. And I said, well, I'll just go up and turn. I was afraid the guy behind me would hit me. I still had no idea who was in the jeep or nothing about them. You go up to the end of that straight approximately six houses. There's another set of railroad tracks that you have to go up over. There's a dirt road that turned off to the right which follows some railroad tracks and goes up into High Knob, which is where a lot of people hunt and fish and stuff. Well, I seen the car in front of me slow down. I noticed the jeep turning off and I figured, well, you know, they're either going to stop and turn around or they're going up

in there to hunt. The little car in front of me pulled out and he went on up over the little hump across the tracks. I pulled into the same place where the jeep had pulled in and they were gone. There's a dip going out that road. It goes down through a creek crossing and comes back up on the other [140] side and you go on up in the mountains. At that point, I didn't see it, you know. I just turned around and went on back down, turned in my driveway, pulled in a concreted area next to the house, backed back in to where my trailer was. I started getting out of the car. At that time, the same jeep pulled in with the homemade top on it, hardtop. It was a blue silver or bluish gray looking. I've never seen another one like it. And the vehicle pulled up in front of my car and he said, hey, buddy, have you got a problem? And I said, no, sir, I don't have a problem. I said, can I help you with something? And he said, yeah, mother fucker, you can help us with something. He said, you've got a god-damned problem. And I said, what are you talking about, buddy? He said, what in the fuck are you doing following us? I said, sir, I said, I don't know you. I said, I'm not following you. I said, I live here. I said, this is my home and, I said, that's my wife standing over there. I said, can I help you all with something. What's your problem? There was two people in this jeep. One guy had a ball cap on. He had curly, bushy, dark hair and a beard and he had on a camouflage t-shirt that had a yellow circle on it with a slash. I don't know what it said. The other guy sitting on the side next to me had kindly sandy, brown looking hair and a [111] beard and he was sitting there and he said, well, he said, I think you've got a problem. He said, why don't you come on out here in the road with us and he said, we'll just settle it right now. And I said, buddy, I don't have no problem. I said, it sounds to me like you all have got a problem. Something is bothering you. And he said, why don't you come on out here and fight us? And I said, no. I said, let me get ahold of the State Police or somebody and kindly let them come down here and see what's going on and

see what the problem is here. And he said, you do that, Mother Fucker. He said, when they get here, we're going to tell them that you started it. And I said, started what? I said, I haven't done anything. I turned around to my wife and the lady that we babysit for and I said, honey, I said, go in there and call the State Police and she got up and I said, and give them this tag number. And it was a bicentennial plate and I started calling the tag number off to her. And she was going in the door and the other lady was standing there all freaked out with her baby, you know. And that guy, he leaned forward like this and started reaching under the seat and he said, well, I've got something right here that will take care of you, Billy Boy. And that time, I turned and went back to my car. And when I opened the car door up on my car, they [142] backed out and hauled ass. And I called the State Police. They came down later on that afternoon, I guess it was around 7:30 or so, the same jeep came back and went back up the road again. At that time, I talked to my wife and the State Police came there—

Q Without getting into the details of the investigation, you saw the jeep later pass by your house?

A Well, that's what I was getting ready to tell you. My wife also told the trooper that jeep had been by there several times that day.

MR. VERGERA: Objection to hearsay.

THE COURT: Sustained.

Q You saw it yourself later?

A I saw it myself later on that afternoon.

* * * *

MANN—DIRECT

[285] Q How many people were in the black Chevette?

A There was three people in camouflage.

Q All right. Go ahead.

A And I immediately recognized the two people in front as being Mark Hall as a passenger and Don Hall was the operator of the vehicle. And I wrote their tag

number down. I was writing it my mirror reading it backwards and I wrote it down. I had a piece of paper there. I didn't know the guy in the back but I did know the two guys in front. They were real close. So as I went on 652 toward Coeburn, they would get real close but I thought they were just going to intimidate me a little bit because I had had an earlier incident with Mark, with Barry Mark. And I [286] knew that they were just probably going to follow me a little bit and intimidate and aggravate me a little bit. But they kept following me. And I got into the Tom's Creek area just North of Coeburn and there was some traffic in front of me and I passed two cars. And there was a coal truck in front of me and I couldn't get around him. And so they couldn't pass the two cars. It was kind of tight. So when the coal truck made the turn, they come around right in a blind curve and passed those two cars that I had just passed. And I felt like then they were pretty serious about what they were going to do. And so I got to the stop sign there of Route 652 and 72 and there was a log truck and he was going pretty slow. So we stopped at the stop sign. They come right back on me real close again and followed me through Coeburn. I contemplated stopping at the police department there at Coeburn but sometimes somebody is there and sometimes there's not. And so I continued on through Coeburn and they were real close. And I kept thinking, well, they're going to peel off any minute. They're letting me know that I knew they're there and stuff. They're going to peel off any minute. So I made the turn off of 58 there back onto 72 again and they continued to follow me. And going out of the corporation limits there of Coeburn, it's [287] kind of downhill and you've got a straightaway you can pass. So I passed the log truck. He was still in front of me. And I passed the log truck and they come up behind me and tried to pass me, kept their momentum up and tried to pass me. Well, I kept my momentum up and wouldn't let them. I continued to stay in front of them. And so I

continued on for about another mile or so and I met a State Trooper. It was right near where a guy used to be a salaried person, Buck Havich And I flashed my lights at the State Trooper. And I didn't get his attention. Well, I got his attention. He waved at me. I don't know, he thought I knew him or something and he did wave at me. And so I continued on to another straight area where there was no cars and they tried to pass me again. And at this time, my car was faster than theirs and I managed to stay in front of them again.

Q You're on Route 58 at this time?

A No, this is 72.

Q You're on 72?

A 72 goes all the way. Where 652 intersects, it comes into 58 in Coeburn and 72 goes off toward Dungannon then.

Q All right, sir.

A 72 goes to my house. Anyway, when I got to this [288] other straight patch, they tried to pass me again and I continued to keep them behind me. And so I was in Wise County. I went into Scott County. The roads are real crooked through there, a lot of curves and a lot of mountainous roads. And so we got off the mountain. They would get real close and they'd back off, get real close and back off and it was just sort of this way the whole distance really. And so we got near where I live and I met a girl that's on the rescue squad. I belong to the rescue squad. I'm on the board of directors there. And I met this girl and she knew me right off the bat so I flashed my headlights on and off to get her attention. And so I went on into Dungannon. Well, the straightaway before I got to Dungannon, these guys tried to pass me again. This time it was really a race. And they got the fender alongside my car but I managed to stay in front of them. But we got on into Dungannon and my brother-in-law is a police officer in Norton and I knew he was at home and I thought maybe he might be out in front of his house. So I drove by his house; this is right through

Dungannon; and his doors was shut but his truck was setting there. And I got by his house and I made a right turn onto a side street. And when I made this right turn, these guys were still right on me. They were right on my [289] bumper and they made the turn, also. And I made the right turn on the side street and went up to the back street that runs parallel with the main street. I made another right turn. And they continued to follow me. And I went three streets back in the direction that I had came and made a right turn again that put me back on the road I was on initially. They were still right behind me. I made a left turn going back North on Route 72 and they made the turn, also. So I went around by the fire department, made a left turn back on this same back street again. Well, they made the left turn. So there was a store down there and I knew I was going to have to make a decision somewhere to get these guys off me because I felt like they were pretty serious about what they were going to do. And I thought, if I can get to that store, I know the guy that runs the store and, you know, if I can get there, I'll have somebody that can see what's going on. I felt like I had the attention of the people, you know, because I had flashed my lights at some people and stuff and they knew—you know, maybe somebody would see something that was going on. So when I got to that store—sometimes he open and sometimes he's not. So I was looking at it and I seen the door open a little bit so I applied my brakes. And when I did, the car behind me rammed me in the rear [290] and it just raised the back end of my car up. And everything just kind of went blank for a second, you know, trying to be composed after being hit and I didn't know what they were going to do. So I opened the door on my car. I just put it in park and left the motor running. I found out later somebody had turned the motor off. But I got out. And as I got out and stood up, they were getting out. And I heard a gun go off. Well, that scared me to death. I knew then that these guys were armed and I

didn't know what their intent was. But I felt like they meant really to try to do me in. But there was too many people there. I've lived in Dungannon all my life and everybody knew me. And so I started to go to the store —Well, Mark, he was in the passenger side. The store was over on my right. My car is here, twenty feet away is the store and two people in the store. Don come up to the driver's side.

Q When you say Don, Don Hall?

A Don Hall. He was the operator of the vehicle. Okay. When I got out of the vehicle, he come up real quick on this side. Barry—I call him Mark. Mark is his middle name. Mark come up to the front of my car and cut me off. And they asked me, said, where in the hell is your damned gun. And I said, I don't have a gun. You all [291] do. You just now fired the gun. Where is your gun. And they was cussing and calling me a goddamned scab and a son of a bitch and everything. And so I seen, you know, that they were pretty serious about this, both of them a lot bigger than I was. The third guy, the Freeman guy, he stayed back. He stayed in the car for a minute or so when this was going on but he did eventually get out. And so I hollered and told the guy in the store; his name is Ross Elliott. I hollered and said, Ross, call the police. And Don said, no, you son of a bitch, we'll call the police on this one. And so it didn't make sense. And so he just shoved me back against the side of my car. And so I managed to stay on my feet and I went back behind their car to try to go back into the store. When I made the turn behind their car, Mark come back around the front of my car and cut me off. I thought he was just going to bully up to me again like they had there when I first got out of the car and just give me a good cussing or whatever. And he sucker punched me in the side of the head and my glasses went off. And he hit me again and knocked me down. And before I could get up, Don come over to do some foot

work. He kicked me in the ribs, I'd say, two or three times and he was trying to kick me in the face. And I was real sore in here where I had protected [292] my face. I was down on my hands and knees protecting my face like this. And I was, you know, real sore after that. And they seen that people were seeing this and they stopped. And I went into the store and Mr. Elliott; I've known him forever; I told him to call the police. And he is an older like guy. He was pretty upset. He said, you call them. So I went immediately to the phone and called the police, called the dispatcher, which the dispatcher knows me through working the rescue squad and stuff. And I told her what had happened. I needed an officer there quick and I said, go ahead and get me an ambulance here because, I said, I have been in an accident and I have been assaulted. And so just in probably a minute, there was a deputy on the scene. Philip Lane, he was there. He is a county deputy. And it just so happened that this deputy was in route to my house when this happened, when the call come in. He was only like a mile away. And he was in route to my house to serve me with a summons to go and testify against Mark. He had hit my car with a rock earlier and I had got him with a warrant. And this was why they were intimidating me, trying to get me to drop this warrant, I'm sure. But, anyway, he served the warrant on me while I was in the ambulance.

Q Let me go back on just a couple of items here. [293] Approximately what was the distance in miles from where this Chevette started following you to where this fight occurred or the beating occurred in Dungannon?

A It was twenty plus. I would say twenty-two or twenty-three miles or something like that.

* * * *

[295] Q Were you injured in this attack?

A Yes, I was. When they hit me in the side of the head, which my glasses went off. All I found of my

glasses was one of the lenses. I don't know what happened to the frames. I went back and looked. Apparently somebody had picked them up. I guess—I don't know who picked them up. All I found was one of the lenses. I had blood coming out of this ear, out of my left ear. My elbow was bleeding and the palm of my hand, when I caught myself, when I hit the road or the concrete there, the sidewalk or something, I had a laceration in the palm of my hand.

[296] Q How many times did Don Hall kick you when you were down on the ground?

A Two or three times in my ribs and probably two to three times—He tried to kick me in the face and I blocked those. I did manage to do that. I blocked them with my hand like this while I was down, you know, on my hands and knees. And I was doing this number to keep from getting licks in my face.

Q Did the CB transmission about, here comes the scab in so and so car, did that accurately describe your car?

A Yes, sir. I drive—I bought this car. It's an older car that I bought for I knew people was having trouble with windows getting broke and stuff and it's a 1980 beige Malibu.

* * * *

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

Record No. 92-0299

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA,
Appellant,
v.

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

BRIEF FOR APPELLANT

* * * *

QUESTIONS PRESENTED

1. Whether the contempt fines must be vacated as moot due to the settlement of the underlying private civil action.
2. Whether the contempt fines are criminal in nature and therefore were imposed in violation of the constitutional protections mandated in the trial in criminal contempt proceedings.
3. Whether the contempt fines must be reversed because they were so unreasonably large as to violate the due process guarantee of the Virginia Constitution and the United States Constitution, as well as federal labor policy.

4. Whether the trial judge, in light of his family's involvement in the underlying controversy and the widely-perceived partiality of the court, should have recused himself.

* * * *